## TRANSITION MANAGEMENT AGREEMENT AND LEASE

by and between

## THE CITY OF SALISBURY,

a municipal corporation incorporated in the State of North Carolina

and

# HOTWIRE COMMUNICATIONS, LTD.,

a Pennsylvania limited partnership, d/b/a Hotwire Communications of North Carolina, Limited Partnership

Dated April 3, 2018

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## TRANSITION MANAGEMENT AGREEMENT AND LEASE

THIS TRANSITION MANAGEMENT AGREEMENT AND LEASE (this "Agreement") is made and entered into this 3rd day of April, 2018 (the "Agreement Effective Date"), by and between THE CITY OF SALISBURY, a municipal corporation incorporated in the State of North Carolina and located in Rowan County, North Carolina (the "City"), and HOTWIRE COMMUNICATIONS, LTD., a Pennsylvania limited partnership with a principal office at 3 Bala Plaza E, Suite 700, Bala Cynwyd, Pennsylvania, doing business in North Carolina as Hotwire Communications of North Carolina, Limited Partnership ("Hotwire"). Each of the City and Hotwire may be referred to in this Agreement as a "Party" and together as the "Parties."

#### **RECITALS**

- A. The City owns and operates, through a City division providing services under the name "Fibrant," an optic-fiber-to-the-premises network that provides telephone, video, and internet services to residences, businesses, and other entities in the City and in certain other areas of Rowan County. The system, as more particularly described in Appendix 1 (the "**Fibrant System**"), includes portions of the City's (i) customer service center at 1415 S. Martin Luther King Jr. Avenue, Salisbury, North Carolina, and (ii) communications building site at 310 Hill Street, Salisbury, North Carolina.
- B. The City originally financed the acquisition and construction of the Fibrant System and certain other projects through the issuance of its Certificates of Participation, Series 2008A, in the principal amount of \$19,560,000 (the "2008 Certificates of Participation"). In 2013, the City refinanced a portion of the 2008 Certificates of Participation through the issuance of its Refunding Certificates of Participation, Series 2013, in the principal amount of \$16,928,000 (the "2013 Certificates of Participation").
- C. In 2016, the City refinanced the then outstanding 2008 Certificates of Participation and the 20013 Certificates of Participation with \$29,600,000 in proceeds of an Installment Financing Contract dated September 14, 2016 (the "2016 Installment Financing Contract"), between STI Institutional and Government, Inc. ("Sun Trust Institutional"), and the City. To secure its repayment obligations under the 2016 Installment Financing Contract, the City entered into a Deed of Trust and Security Agreement dated September 14, 2016 (the "2016 Deed of Trust"), pursuant to which the City granted to the trustee named therein a lien on the Customer Service Center and on all equipment financed with the proceeds of the 2008 Certificates of Participation, including splicing tools, lines, and head-end equipment.
- D. In January 2017, the City issued a Request for Proposals (the "**RFP**") in which the City expressed its interest in entering into a contractual arrangement with a third-party provider that would enhance the operation, sales, marketing, and delivery of communication services from the Fibrant System.
- E. The City received and evaluated all proposals submitted in response to the RFP, including the proposal submitted by Hotwire, and selected Hotwire as the best candidate to enter into such a contractual arrangement. The City and Hotwire have negotiated this Agreement to

implement such contractual arrangement and set forth the terms of an agreement pursuant to which the City would appoint Hotwire to serve as manager of the Fibrant System during an interim transition period and, subject to certain conditions, lease the Fibrant System to Hotwire.

F. Pursuant to Section 160A-321(a) of the North Carolina General Statutes, the City is authorized to lease the Fibrant System on such terms and conditions as the City Council may deem best; provided, however, that the proposal to lease the system is first submitted to a vote of the people and approved by a majority of those who vote thereon (the "**Referendum**"). The City has requested the Rowan County Elections Board to conduct the Referendum on May 8, 2018.

#### **AGREEMENTS**

**NOW THEREFORE**, in consideration of the mutual promises herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **ARTICLE I**

#### **DEFINITIONS**

1.1 <u>Definitions</u>. Capitalized terms not otherwise defined in the text of this Agreement will have the meanings ascribed to them in the Definition Appendix appended to and made a part of this Agreement as Appendix 2.

#### **ARTICLE II**

## MANAGEMENT AGREEMENT

- 2.1 <u>Appointment and Acceptance</u>. The City hereby appoints and engages Hotwire and Hotwire hereby accepts its appointment and engagement as manager of the Fibrant System for a transition period described in Section 2.2. Hotwire agrees to manage the Fibrant System and perform all the services required of it under this Agreement for the benefit of the City and in a manner that will enhance the operation, sales, marketing, and delivery of Communication Services from the Fibrant System, all on the terms and conditions set forth in this ARTICLE II.
- 2.2 <u>Term.</u> The term of Hotwire's appointment and engagement as manager for the period (the "Transition Management Period") commencing on the date hereof and continuing through and until the Lease Commencement Date as provided in Section 3.4(a); provided, however, that in the event a majority of those entitled to vote in the Referendum do not approve the proposal to lease the Fibrant System, then the Transition Management Period will end on July 31, 2018, in which case Hotwire will provide consulting services to the City as provided in Section 2.10. The Transition Management Period will be subject in any event to earlier termination as provided in this Section 2.2. In the event of a default by the other Party in the performance of its obligations under this ARTICLE II that continues beyond any applicable cure period, the City or Hotwire may terminate Hotwire's appointment and engagement as manager under this ARTICLE II upon 10 days' written notice.
- 2.3 <u>Authority; Reporting</u>. Hotwire will manage the Fibrant System and provide the services required of it hereunder as directed by the City Council and will report to the City

Manager or to such other Person as the City Manager may designate from time to time. The City will direct and supervise the performance of the Transition Management Services in accordance with the City's generally applicable policies and procedures. Subject to the immediately preceding sentence and the other provisions of this ARTICLE II, Hotwire will have authority to supervise the day-to-day operations of the Fibrant System and such additional authority as may be required for Hotwire to provide the Management Services, including the Management Services described in Section 2.5. Notwithstanding the foregoing, Hotwire will not have authority to, and may not, enter into any contract or agreement with a third party that would result in any binding obligation of the City or the Fibrant System.

2.4 Transition Management Officer. During the Transition Management Period, Hotwire will provide and make available to the City a Transition Management Officer reasonably acceptable to the City (the "Transition Management Officer") of the Fibrant System. The Transition Management Officer will work with the City Manager and the staff and managers of the Fibrant System to provide the Transition Management Services pursuant to Section 2.5. The Transition Management Officer will remain an employee of Hotwire and Hotwire will be responsible for all salary, benefits, and other compensation of the Transition Management Officer. Hotwire will have authority to discipline or terminate the Transition Management Officer; provided, however, that Hotwire will remove the Transition Management Officer upon the reasonable request of the City. In the event the initial Transition Management Officer is so removed or becomes unavailable for any other reason, including as the result of termination for any reason of such officer's employment by Hotwire, Hotwire will provide and make available to the City a substitute Transition Management Officer who will be reasonably acceptable to the City, on the terms and conditions set forth in this ARTICLE II. The Transition Management Officer will exercise day-to-day management oversite of the Fibrant System; provided, however, that the City Manager may reject and overrule any management decision made by the Transition Management Officer, in which case the effects of such rejection or overruling will not be attributed to Hotwire with respect to satisfaction of its obligations pursuant to Section 2.5(a)

## 2.5 Transition Management Services.

- (a) <u>General; Standard of Performance</u>. Hotwire will manage and have authority over the day-to-day operations of the Fibrant System and provide the services described in this Section 2.5 (the "**Transition Management Services**")
  - (i) in a professional, diligent, careful, and vigilant manner equivalent in character, quality, and quantity with the operation, management, and marketing of other communication networks operated by Hotwire or its Affiliates;
  - (ii) to achieve, to the extent reasonably possible, the Service Level Standards set forth in Appendix 3 (the "Service Level Standards"); and
  - (iii) in compliance with all Legal Requirements.

- (b) <u>Employees</u>. The City will continue to employ the management and staff personnel employed in its Fibrant Division prior to the date of this Agreement; provided, however, that the City retains full authority to hire, terminate, and discipline such management and staff employees in its discretion and that all City policies applicable to its employees will be applicable to such employees.
- (c) <u>Hotwire Personnel</u>. In addition to the Transition Management Officer, Hotwire will make available for the performance of Transition Management Services such personnel as Hotwire reasonably determines to be necessary for the performance thereof to the standards set forth in this ARTICLE II. Hotwire will employ and compensate all personnel providing Transition Management Services. Hotwire employees, other than the Transition Management Officer, will not be required to devote all or any minimum portion of their time and services to Transition Management Services and may perform other services for Hotwire so long as such other services do not unreasonably interfere with such employee's performance of Transition Management Services. Hotwire employees providing Transition Management Services, other than the Transition Management Officer, will act solely at the direction of Hotwire and the City will have no authority to select, hire, direct, discipline, or terminate any such Hotwire Employee.
- (d) <u>Hotwire Resources</u>. Hotwire will provide such additional Hotwire resources as Hotwire reasonably determines to be necessary to provide the Transition Management Services;
- (e) <u>Specific Transition Services</u>. Hotwire will provide the following specific services, *inter alia*, as part of the Transition Management Services:
  - (i) supervision of sales, marketing, pricing, branding, and promotion of Communication Services to customers (including recommendations as to rate sheets, channel line-ups, and product offerings, and recommendations for contracts with new and existing business customers);
  - (ii) procurement, as representative of the Fibrant System but subject to Section 2.3, of cable television content, internet, video, and telephone service; provided, however, that Hotwire will not be the agent of the City or have authority to enter into any contract or agreement or otherwise incur any binding legal obligation on behalf of the City;
  - (iii) supervision of billing and collection from Fibrant System customers;.
  - (iv) supervision of customer service functions;
  - (v) supervision of the NOC, including the monitoring of Communication Services, and maintenance of other components and equipment of the Fibrant System;
  - (vi) supervision of installation of Drops and Customer Premises Equipment;

- (vii) supervision of the Fibrant Division's collection and submission of payment to applicable taxing authorities of all sales, use, privilege, other taxes related to operation of the Fibrant System;
- (viii) supervision of the Fibrant Division's maintenance of books and records, including financial reporting and including the preparation and maintenance of Outside Plant Maps and System Maintenance Records; and
- (ix) such other services with respect to the Fibrant System as the City may reasonably request.
- (f) <u>Special Reports</u>. Hotwire will prepare and submit to the City, from time to time, such financial and other reports as the City may reasonably request.
- (g) <u>Compliance with Law; Licenses, Permits etc</u>. Hotwire will:
  - (i) comply, and use its commercially reasonable efforts to cause the Fibrant System to comply, with all Legal Requirements;
  - (ii) apply for, obtain, and maintain, in its name or in the name of the Fibrant Division, as applicable, all Required Licenses; and
  - (iii) comply, and use its commercially reasonable efforts to cause the Fibrant System to comply, with all System Insurance Requirements, System Contract Requirements, Manufacturer's Recommendations, and Prudent Communication Service Industry Practice.
- (h) <u>Insurance Requirements</u>. During the Transition Management Period, Hotwire will, at its expense, maintain the insurance coverage required under Sections 10.3 and 10.4
- 2.6 <u>Expenses to be Borne by Hotwire</u>. Hotwire will be responsible for and pay, from its own funds and without reimbursement from the City:
  - (a) All compensation expense of Hotwire employees, including the Transition Management Officer;
  - (b) All expenses and fees in connection with any licensing, registration, qualification, approval, or permit, obtained or required to be obtained by Hotwire in its name;
  - (c) All premiums and other expenses in obtaining and maintaining the insurance required to be maintained by Hotwire pursuant to Section 2.5(h); and
  - (d) All other expenses of Hotwire in providing the Transition Management Services, including all overhead and general expenses of Hotwire and all travel expenses of Hotwire employees.

- 2.7 <u>Office Space; Support</u>. The City will furnish, at no cost to Hotwire, such office space in the NOC, administrative assistance, and logistical support as Hotwire may reasonably request for the performance of Transition Management Services.
- 2.8 Management Fee. The City will pay to Hotwire, monthly in arrears, as compensation for the Transition Management Services during the Transition Management Period, a monthly Management Fee equal to the sum (i) of \$25,000 and (ii) 50 percent of Third-Party-Contract Savings actually realized by the City for such month. The Management Fee will be payable on or before the 10<sup>th</sup> day of each calendar month with respect to the preceding calendar month. The Management Fee will be prorated, based on the number of days in which Transition Management Services are performed, for any period in which Transition Management Services were not performed for a full calendar month. "Third-Party-Contract Savings" means the actual reduction in monthly payments made by the City during the Transition Management Period to third-party providers (including Momentum and Minerva) to the Fibrant System, as compared to the monthly payment to such third-party provider during the last full calendar month prior to the Agreement Effective Date, as reflected in invoices and other documentary evidence; provided, however, that Third-Party-Contract Savings will not include any portion of any such reduction attributable to reduction in the number of subscribers or customers of the Fibrant System or to any change or reduction in level or quality of service from such thirdparty provider.
- 2.9 <u>Tax Safe Harbor</u>. The City and Hotwire acknowledge and agree that the management contract set forth in this ARTICLE II is intended to meet and comply with the safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under Section 141(b) of the Internal Revenue Code as provided in Revenue Procedure 2017-13. If the City at any time determines in its discretion that the provisions of this ARTICLE II fail to comply with such safe harbor conditions, then the Parties will amend this Agreement, effective immediately, in such manner as the City may reasonably request to ensure compliance with such safe harbor conditions; provided, however, that if Hotwire determines in its discretion that the modifications effected by such amendment are materially adverse to Hotwire, then Hotwire may terminate this ARTICLE II upon 30 days' written notice to the City.

## 2.10 Alternative Consulting Arrangement.

(a) In the event the Transition Management Period expires on July 31, 2018, as set forth in the proviso to the first sentence in Section 2.2, then the City will engage Hotwire, and Hotwire will agree to perform, consulting services to the City for a consulting period commencing on August 1, 2018, and ending on July 31, 2021, subject to the right of either Party to terminate the consulting agreement at any time after December 31, 2019, upon 90 days' written notice to the other Party. During such consulting period, Hotwire will consult with the City and assist the City in contract negotiations, marketing of Communication Services, and development of competitive strategies. Hotwire will provide such resources as the City and Hotwire reasonably agree to be necessary for Hotwire to provide such consulting services; provided, however, that Hotwire will not be required to

devote more than 15 hours of the services of Hotwire employees during any calendar month. Hotwire will perform such consulting services to the standards set forth in Section 2.5(a). In the event of a default by the other Party in the performance of its obligations under this Section 2.10 that continues beyond any applicable cure period, the City or Hotwire may terminate Hotwire's appointment and engagement as consultant upon 10 days' written notice.

(b) The City will pay to Hotwire, monthly in arrears, as compensation for the consulting services described in Section 2.10(a) a monthly consulting fee equal to the sum (i) of \$5,000 and (ii) 50 percent of Third-Party-Contract Savings actually realized by the City for such month. The consulting fee will be payable on or before the 10<sup>th</sup> day of each calendar month with respect to the preceding calendar month and will be prorated, based on the number of days in which such consulting services are performed, for any period in which consulting services were not performed for a full calendar month.

#### **ARTICLE III**

#### SYSTEM LEASE

- 3.1 **Lease**. Subject to and conditioned upon satisfaction of the Lease Conditions Precedent as provided in Section 3.3, and upon and subject to the terms and conditions set forth in this Agreement, the City exclusively leases to Hotwire and Hotwire leases from the City (such lease, the "System Lease") all of the City's right, title, and interest in and to the following with respect to the Fibrant System (collectively, the "System Assets"), including the following:
  - that certain area of approximately 5,144 square feet on the main level of the office building owned by the City located on Rowan County tax parcel 01707101 with an address of 1415 S. Martin Luther King Jr. Avenue, Salisbury, North Carolina (the "Customer Service Center"), which certain area is more particularly described and shown in Appendix 4, that houses the NOC (the "NOC Premises"), together with a non-exclusive license to use the corridors, restrooms, stairwells, and other areas identified as "Common Areas" in Appendix 4;
  - (b) that certain area of approximately 2,552 square feet on the main level of the Customer Service Center, more particularly described and shown in Appendix 4, that houses the Head End (the "Head-End Premises"), subject to the reservation of a license in favor of the City to continue sharing space for certain of its "data center" equipment (which is not a part of the System Assets), and having access thereto on a 24/7/365 basis;
  - (c) all furnishings, fixtures, and equipment used to operate the NOC, including computers, terminals, monitors, servers, video walls, desks, chairs, and other furnishings, located within the NOC Premises as shown on the drawing made a

- part of Appendix 4, including the furnishings and equipment described in Schedule 3.1 (c) (collectively, "NOC Furnishings and Equipment");
- (d) all central control devices used to provide centralized functions to the Fibrant System, such as remodulation, retiming, message accountability, contention control, diagnostic control, and access to gateways, middleware, servers, and other equipment in the Head End Premises, including the equipment set forth in Schedule 3.1(d) (collectively, the "Head End");
- (e) all antennae, satellite dishes, and related electronics and equipment used in or for the receipt and interjection of video program into the Fibrant System and the Thermobond Building (the "Thermobond Building"), all as more particularly described and shown in Appendix 4 (the "Satellite Dish Equipment"), including the equipment set forth in Schedule 3.1(e);
- (f) those certain land and building areas on or in which the Satellite Dish Equipment is located and appurtenant easements, more particularly described and shown in Appendix 4 (the "Satellite Dish Premises");
- all fiber optic cable, conduits, attachment hardware (including bolts and lashing), guy wires, anchors, pedestals, concrete pads, amplifiers, and such other fixtures, and other items of property, including all components thereof (such as optical splitters, fiber taps, network interface devices, optical line cards, fiber termination panels, splice enclosures, fiber drips, cross connect cabinets, cabinets, outside plant mini-cabinet mounting posts, fiber distribution hubs, fiber access terminals, and first entry fiber-splice cases), used in connection with the Fibrant System and located between the two demarcation points shown on the Demarcation Drawings as shown in Appendix 5, together with all replacements, modifications, alterations and additions thereto (collectively, the "Outside Plant"); provided, however, that Outside Plant does not include any Retained Dark Fiber as provided in Section 3.2;
- (h) all easements, rights and appurtenances relating to the System Assets described in paragraphs (a) through (g), and including any Easements, Permits and Pole Agreements;
- (i) all maps, drawings, blueprints, and similar records of the Outside Plant (the "Outside Plant Maps");
- (j) all terminals, modems, including optical network terminals, electronic equipment, and internal premises wiring necessary for the provision of Communication Services to the residence, business, or other premises of a customer or subscriber of Communication Services ("Customer Premises Equipment");
- (k) all automobiles, trucks, and other vehicles used as of the Lease Commencement Date by Fibrant Employees in connection with operation of the Fibrant System or

- marketing of Communication Services, as more particularly described in Schedule 3.1(k) (the "Fibrant Vehicles");
- (l) all Capital Improvements to the Fibrant Systems that are conveyed to the City or otherwise become System Assets during the Lease Term, as provided in ARTICLE VIII; and
- (m) all other equipment used by the City as of the date of this agreement in the provision of Communication Services to customers of the Fibrant System, including the Test Equipment described in Schedule 3.1(k).
- 3.2 Retention of Dark Fiber for City Use. The City will retain ownership of, and the System Assets will in no event include, the "dark fiber" used by the City as of the date of this Agreement for its internal purposes, including to connect the City and certain City facilities, as more particularly shown in Schedule 3.2 (the "Retained Dark Fiber"). Hotwire will maintain the Retained Dark Fiber to the same extent and in the same manner as the Outside Plant, including any Required Capital Improvements thereto.

### 3.3 Lease Conditions Precedent.

- (a) The respective obligations of the Parties to effect and perform the System Lease, as applicable, are subject to and conditioned upon the satisfaction or waiver of the following conditions (the "Lease Conditions Precedent"):
  - (i) On May 8, 2018, the City's proposal to enter into and perform the System Lease is submitted to a vote of the people of the City and approved by a majority of those who vote thereon as provided in Section 160A-321(a) of the North Carolina General Statutes;
  - (ii) SunTrust International or its successor as Bond Financing Party to the Bond Refinance Contract (described in Section 3.3(b)(i) will have consented to the System Lease and the City, Hotwire, and SunTrust International or such successor will have entered into a subordination, non-disturbance, and attornment Agreement in customary form and containing terms and conditions reasonably reasonable acceptable to Hotwire and the Bond Financing Party to the Bond Refinance Contract, and which provides, *inter alia*, that (i) such Bond Financing Party's interest in the System Assets is superior to Hotwire's leasehold interest pursuant to the System Lease, and (ii) if such Bond Financing Party at any time succeeds to the interest of the City in the System Assets, Hotwire will be bound to such Bond Financing Party under all the terms, covenants, and conditions of this Agreement for the balance of the Lease Term after such succession;
  - (iii) No judgment, order, decree, statute, law, ordinance, rule or regulation, whether preliminary, temporary, or permanent, entered, enacted, promulgated, enforced or issued by any court or other Governmental Entity of competent jurisdiction or other legal restraint or prohibition

- (collectively, "<u>Restraints</u>") will be in effect that prohibits, prevents, or makes illegal the performance of the System Lease;
- (b) The obligations of the City to effect and perform the System Lease are further subject to and conditioned upon the satisfaction or waiver of the following conditions (the "City Lease Conditions Precedent"):
  - (i) The City will have completed the refinancing of all amounts outstanding under the 2016 Installment Financing Contract on terms and conditions acceptable to the City in its sole discretion and entered into a replacement financing contract (the "Bond Refinance Contract") with respect thereto on terms and conditions acceptable to the City in its sole discretion;
  - (ii) The representations and warranties of Hotwire contained in Section 20.2 will be true and correct in all material respects as of the Lease Commencement Date as though made on the Lease Commencement Date (except to the extent such representations and warranties expressly relate to a specific date or the Agreement Effective Date, in which case such representations and warranties will be true and correct in all material respects as of such date);
  - (iii) Hotwire will have performed in all material respects all obligations required to be performed by it under this Agreement prior to the Lease Commencement Date:
  - (iv) No Material Adverse Event will have occurred with respect to Hotwire; and
  - (v) The City will have received an officer's certificate duly executed by the Chief Executive Officer and Chief Financial Officer of Hotwire to the effect that the conditions set forth in clauses (ii), (iii), and (iv) have been satisfied and certifying as to the due and valid execution of this Agreement by Persons authorized to do so.
- (c) The obligations of Hotwire to effect and perform the System Lease are further subject to and conditioned upon the satisfaction or waiver of the following conditions (the "Hotwire Lease Conditions Precedent"):
  - (i) The representations and warranties of the City contained in Section 20.1 will be true and correct in all material respects as of the Lease Commencement Date as though made on the Lease Commencement Date (except to the extent such representations and warranties expressly relate to a specific date or the date of this Agreement, in which case such representations and warranties will be true and correct in all material respects as of such date);

- (ii) The City will have performed in all material respects all obligations required to be performed by it under this Agreement prior to the Lease Commencement Date:
- (iii) No Material Adverse Event will have occurred with respect to the City; and
- (iv) Hotwire will have received an officer's certificate duly executed by the City Manager of the City to the effect that the conditions set forth in clauses (i), (ii), and (iii) have been satisfied and certifying the due and valid execution of this Agreement by Persons authorized to do so.
- 3.4 <u>Term.</u> The term of the System Lease (the "Lease Term," as more specifically defined in paragraph (a)(ii) herein below), will commence as of the Lease Commencement Date and continue through the end of the Lease Term, unless earlier terminated as provided for in this Agreement, in accordance with the following provisions:

### (a) Term Definitions.

- (i) **Lease Commencement Date** means the date of commencement of the Lease Term, determined in accordance with the following provisions:
- (A) except as otherwise provided in this Agreement, the Lease Commencement Date will be the later of (A) July 1, 2018, and (B) the date 30 days after satisfaction or waiver of all Lease Conditions Precedent, City Lease Conditions Precedent, and Hotwire Lease Conditions Precedent; and
- (B) the Parties will confirm the Lease Commencement Date by the execution of a Confirmation of Lease Term in the form attached hereto as Exhibit 1. If Hotwire fails to execute or object to the Confirmation of Lease Term within 10 days of its delivery by the City, the City's determination of the Lease Commencement Date will be deemed accepted by Hotwire.
- (ii) **Lease Term** means the time period that commences on the Lease Commencement Date and continues through the end of the Initial Term or the Renewal Term, as applicable, unless earlier terminated as provided for in this Agreement.
- (iii) **Initial Term** means the time period that commences on the Lease Commencement Date and continues through the date 20 years after the Lease Commencement Date, unless earlier terminated as provided for in this Agreement.
- (iv) **Renewal Term** means the time period that commences at the end of the Initial Term and continues through the date 40 years after the Lease Commencement Date, unless earlier terminated as provided for in this Agreement.

- (b) Subject to and conditioned upon the satisfaction or waiver of the following conditions (the "Renewal Conditions Precedent"), Hotwire will have the option to have the Lease Term end at the end of the Renewal Term instead of the end of the Initial Term:
  - (i) this Agreement is in full force and effect, the System Lease has not been terminated for any reason, and Hotwire has, during the 36-month period ending on the date 30 days prior to the end of the Initial Term (the "Renewal Reference Period"), met all Service Level Standards in at least three Calendar Quarters during any period of four consecutive Calendar Quarters;
  - (ii) during the Renewal Reference Period, Hotwire has paid to the City aggregate Rent at least equal to sum of the Quarterly Rent Targets for such period;
  - (iii) Hotwire, at the time of exercise of this renewal and as of the end of the Initial Term, (A) is not in default with respect to any terms, covenants or conditions of this Agreement, (B) has cured any past defaults; and (C) any such cured defaults did not include more than two in which the monetary damages related thereto exceeded \$100,000; and.
  - (iv) Hotwire will have delivered to the City written notice of its intent to renew no later than the end of the 216th calendar month of the Initial Term, time being of the essence.

### **ARTICLE IV**

#### RENT, ADDITIONAL CHARGES

- 4.1 <u>Rent and Additional Charges</u>. For the use and occupancy of the System Assets, during the Lease Term, Hotwire will pay to the City (or as otherwise directed by the City) the Rent, as provided in this Section 4.1, and Additional Charges, as provided in Section 4.6.
- 4.2 <u>Rent</u>. Hotwire will pay Rent, as provided in this Section 4.2, in consecutive quarterly installments on the 15<sup>th</sup> day after the end of each Calendar Quarter with respect to the preceding Calendar Quarter. The following definitions will be applied in determining such Rent:
  - (a) "Rent" means, for each Calendar Quarter or prorated portion thereof, an amount equal to the applicable percentage (the "Revenue Percentage") of Communication Service Revenue set forth in the table below of all Communication Service Revenue received by Hotwire during such quarter or portion thereof, subject to credits for the Drop Installation Charge, Retained Dark Fiber maintenance, Data Center Capital Improvements, and any other credit against Rent to which Hotwire is entitled under this Agreement:

Communication Service	Revenue Percentage
Video Service	10%
Internet Service	30%
Voice Service	10%
Data Center Service	20% ,subject to Section 4.5
Data Transport Service	25%
Dark Fiber Service	30%
Other Services	10%, subject to Section 4.6

- (b) "Communication Service Revenue," with respect to each Communication Service, means all moneys or things of value collected or received by Hotwire during an applicable period from all subscribers and customers of Hotwire in the Grandfathered Fibrant Service Area (subject to Section 9.2) in respect of connection to or use of the Fibrant System or any part thereof for such Communication Service; provided, however, that Service Revenue does not mean or include (A) any amount collected by Hotwire for governmental excise, sales, or similar taxes and other governmental authorized fees and surcharges (such as local portability fees) that are invoiced to the customer or subscriber, (B) rent charged by Hotwire to a customer or subscriber for rental of equipment, and (C) non-recurring, one-time charges to a customer or subscriber.
- (c) "Video Service" means any service provided by Hotwire for a fee which provides a subscriber with multi-channel video programming, over-the-top programming, or any other video programming service, and including any linear ad insertion and associated revenue from any Person.
- (d) "Internet Service" means any service provided by Hotwire for a fee which enables a subscriber to access the internet and other remote sites or content over the fiber network.
- (e) "Voice Service" means any service provided by Hotwire for a fee which interconnects with the public telephone switch network, digital telephone service, or otherwise enables a subscriber to connect and communicate with other voice users.
- (f) "Data Center Service" means any service provided by Hotwire for a fee which interconnects with the public telephone switch network, digital telephone service, or otherwise enables a subscriber to connect and communicate with other voice users.

- (g) "Data Transport Service" means any service provided by Hotwire for a fee which transmits data between two or more points on the fiber network, including, but not limited to switched Ethernet, Metro-E, MPLS, and "wavelength" service.
- (h) "Dark Fiber Service" means the provision of the right to use, including by sublease or grant of indefeasible use rights, fiber optic cable that has no optronics or electronics attached and that has not been "lit" or placed in service.
- (i) "Other Service" means any Communication Service, other than Video Service, Internet Service, Voice Service, Data Center Service, Data Transport Service, and Dark Fiber Service, provided through the Fibrant System.

## 4.3 Drop Installation Charge Credit.

- (a) Hotwire will be entitled to a credit against Rent due for any quarter pursuant to Section 4.2 in an amount equal to the Drop Installation Charge incurred by Hotwire during such quarter.
  - (i) "Drop Installation Charge" means an amount equal to the sum of (i) the Contract Cost of installation of all Drops and NIDs installed by a contractor on behalf of Hotwire in the Fibrant System during such quarter in accordance with Section 8.3 and (ii) an administrative fee equal to 15 per cent of such Contract Cost.
  - (ii) "Contract Cost" means the sum of the fees and costs actually paid by Hotwire to a third-party contractor for the installation of Drops and NIDs during such quarter and the actual cost of fiber, attachment hardware, and NIDs installed during such quarter.

The Parties acknowledge that the System Assets include the City's inventory of reels of fiber, attachment hardware, and other equipment that Hotwire will use in the installation of Drops, and that Contract Cost will not include any cost for such inventory.

4.4 <u>Retained Dark Fiber Maintenance Credit</u>. Hotwire will be entitled to a credit against Rent in an amount equal to \$11,000 per quarter in consideration of Hotwire's maintenance of Retained Dark Fiber.

## 4.5 <u>Credit for Data Center Capital Improvement Costs.</u>

(a) The City acknowledges that Hotwire may incur costs to construct and install capital improvements necessary to provide Data Center Service, which improvements will become System Assets immediately upon completion of installation thereof, subject to no Encumbrances, automatically and without any further action on the part of either Hotwire or the City; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City's ownership of such Capital Improvements.

- (b) Hotwire will be entitled to set off against any Rent due solely with respect to the provision of Data Center Services Hotwire's costs incurred in constructing and installing such Capital Improvements. Hotwire will furnish to the City, from time to time, a statement of Hotwire's costs incurred in constructing and installing such capital improvements, together with such additional information as the City may reasonably request to verify such expenditures.
- 4.6 "Other Service" Revenue Percentage Reopener Right. If any Other Service is provided by Hotwire during the Lease Term and either Party asserts that the provision of such Other Service reflects or results from changes in the market for Communication Services as compared to the market for Communication Services on the Agreement Effective Date such that the Revenue Percentage applicable to such Other Service results in economic relationship between the Parties with respect to such Other Service inconsistent with the economic relationship anticipated by the Parties as of the Agreement Effective Date with respect to Communication Services in the aggregate, then such Party may, by written notice to the other Party, assert that it has a Revenue Percentage Reopener Right, as described in this Section 4.6, with respect to such Other Service. Upon delivery of written notice of a Revenue Percentage Reopener Right, the Parties will negotiate in good faith with respect to an adjustment of the Revenue Percentage payable with respect to such Other Service that will result in an economic relationship between the Parties consistent with that anticipated by the Parties as of the Agreement Effective Date. If, within 90 days of delivery of such notice, the Parties have not reached agreement with respect to such an adjustment of the Rent percentage applicable to such Other Service, then the Parties will jointly engage an Independent Telecommunications Expert who will determine what adjustments, if any, to the Revenue Percentage applicable to such Other Service is appropriate in accordance with this Section 4.6. This Section 4.6 will apply only to Other Services, and will not in any event apply to Video Service, Internet Service, Voice Service, Data Center Service, or Data Transport Service.
- 4.7 Additional Charges. In addition to the Rent payable by Hotwire pursuant to Section 4.1, Hotwire will also, from time to time as and when due, and in any event promptly upon demand therefor by the City, pay, or reimburse the City for, as additional rent, any and all of the following that may be assessed, imposed on or in respect of, or become a lien or charge on (A) the City's right, title, or interest in the System Assets, (B) the System Assets or any part thereof or any rent therefrom or any estate, right, title, or interest therein, or (C) any occupancy, operation, use, or possession of, or sales or services from or activity conducted on or in connection with the System Assets or the lease thereof, all of which are be referred to in this Agreement as "Additional Charges":
  - (a) all *ad valorem* tax, property tax, or payment-in-lieu of *ad valorem* or property tax assessed against or otherwise payable by the City with respect to System Assets (including any such required to be paid by the City to itself), subject to Section 4.12;
  - (b) all franchise fees, franchise taxes (including any franchise tax imposed by Section 153A-154 or Section 160A-214 of the North Carolina General Statutes), sales taxes (including any sales tax under Section 105-164.4 of the North Carolina General Statutes), use taxes, excise taxes, gross receipts taxes, privilege taxes,

- rent taxes, or similar taxes, and any payment-in-lieu of any such taxes assessed against or otherwise payable by the City in respect of the operation of the Fibrant System;
- (c) all fees, charges, and other payments in respect of any Easements, Permits, Pole Agreements, and similar access agreements;
- (d) all regulatory and governmental fees and charges of any kind, other than fees assessed by the City that were not assessed prior to the Lease Commencement Date, to the extent permitted by law;
- (e) all penalties for failure to comply with Service Level Standards required pursuant to Section 6.3;
- (f) the amount of any insurance premiums, deductibles, co-pays, or other amounts to be paid or reimbursed pursuant to Section 10.2(a);
- (g) all other amounts, liabilities, and obligations that Hotwire assumes or agrees to pay under this Agreement, including in respect of Service Costs; and
- (h) in the event of any failure on the part of Hotwire to promptly pay as due, or reimburse the City promptly after demand for payment, for any of the foregoing, all fines, penalties, interests, and other costs that may be added thereto for or with respect to non-payment or late payment thereof, except where such failure results from acts or omissions of the City and provided that no such amount disputed in good faith by Hotwire will be considered non-payment or late payment thereof until such dispute is resolved pursuant to Section 4.8.
- 4.8 Recordkeeping; Audits. Hotwire will record all transactions and entries so that Service Revenue is evidenced accurately in accordance with GAAP. Hotwire will accurately create and maintain adequate records and books of account on all business operations and Communication Services in respect of the Fibrant System, including without limitation information establishing the Drop Installation Charge, in such detail as the City may reasonably request. Hotwire will retain all books of account, financial and other records, invoices, receipts, and Federal and state income tax returns relating to Hotwire's leasing and operation of the Fibrant System, and will make all the foregoing available for inspection by the City or its representative at all reasonable times.
  - (a) Within 10 days after the end of each Calendar Quarter in the Lease Term, Hotwire will deliver to the City a statement signed by the Chief Financial Officer of Hotwire accurately setting forth the Communication Service Revenues and Quarterly Drop Charges for the preceding Calendar Quarter and a computation of the Rent and Additional Charges with respect to such Calendar Quarter, itemized in such detail and accompanied by such supporting information as the City may reasonably request. Within 30 days after the end of each calendar year during the Lease Terms, Hotwire will deliver to the City a statement signed and sworn to by the same person who is to sign the monthly statement of Communication Service Revenues and Rent and Additional Charges in accordance with the foregoing

- provisions, accurately setting forth the Communication Service Revenues and computation of Rent and Additional Charges for the preceding calendar year.
- (b) The City may, at any time or times, cause an audit to be made of any such statement, may examine Hotwire's books and records, and any other relevant records or information with respect to the period to which such statement applies. Acceptance of Rent tendered by Hotwire will not prejudice such audit rights or constitute a waiver or release of any claim of the City for payment of Rent. The cost of such an audit will be borne by the City unless such audit shows that Hotwire's statement was in error by 3% or more of Communication Service Revenue reported by Hotwire for such period, in which case Hotwire will pay or reimburse the City for the cost of such audit. Any such audit may be required by the City at any reasonable time designated by the City upon three days' prior written notice to Hotwire.
- If, as the result of any such audit, the City determines additional Rent or (c) Additional Charges are due from Hotwire with respect to the audited period (an "Audit Claim"), the City will make such Audit Claim in writing within 90 days after the date written notice of such audit is delivered to Hotwire. An Audit Claim will set forth the nature and amount of such claim in reasonable detail. Hotwire will pay to the City the amount of any Audit Claim within 30 days of receipt of such Audit Claim; provided, however, that if Hotwire objects to any portion of such claim, Hotwire will pay the uncontested portion of such claim within such 30-day period and such dispute will be submitted to an Independent Accountant for determination as provided in Section 21.2. In making such determination, the Independent Accountant may determine the amount of any set-off or deduction from Rent or Additional Charges to which Hotwire asserts that it is entitled pursuant to Section 4.3 or Section 4.5; provided, however, that in no event will the Parties submit to the Independent Accountant, nor will the Independent Accountant have authority to determine, any such reduction or set-off to which Hotwire asserts that it may be entitled pursuant to Section 4.12. Any disagreement or dispute regarding any such claimed reduction or set-off under Section 4.12 will be determined pursuant to Section 22.5.
- (d) If Hotwire fails to submit to the City its statement of Communication Service Revenues, Rent, and Additional Charges as provided in this Section 4.8, Rent and Additional Charges will be payable in the same amounts as during the preceding Calendar Quarter and such sum will be immediately due and payable by Hotwire to the City. Neither the payment nor acceptance of such payment will constitute waiver of, nor excuse or cure, any default under this Agreement, nor prevent the City from or limit the City in exercising any other rights and remedies available to the City under this Agreement. At any time after the date upon which such statement should have been submitted, the City will have the right to audit Hotwire's books and records at Hotwire's sole cost and expense and Hotwire will pay, or reimburse the City for, the cost of such audit to the City immediately upon demand therefor.

- (e) Any additional Rent or Additional Charges due following any audit conducted pursuant to this Section 4.8 plus interest at the Overdue Rate will be due and payable immediately upon demand.
- 4.9 <u>Late Payments</u>. If any installment of Rent or any Additional Charge is not be paid within five days after its due date, the amount unpaid, including any late charges previously accrued, will bear interest at the Overdue Rate from the due date of such installment or Additional Charge to the date of payment thereof, and Hotwire will pay such interest to the City on demand. Neither the payment nor acceptance of such interest will constitute waiver of, nor excuse or cure, any default under this Agreement, nor prevent the City from or limit the City in exercising any other rights and remedies available to the City under this Agreement.
- 4.10 <u>Net Lease</u>. The City and Hotwire acknowledge and agree that (i) the System Lease is and is intended to be a "net, net," or "triple net" lease, and (ii) the Rent will be paid absolutely net to the City.
- 4.11 NOC Premises, Head End Premises, and Satellite Dish Equipment Utilities; HVAC; Shared Services.
  - (a) The City will furnish to the NOC Premises, the Head End Premises, and the Satellite Dish Premises the following utilities and related services, all of which services may be shared with other occupants and areas of the Customer Service Center:
    - (i) To the NOC Premises, hot and cold running water, for drinking, lavatory, and toilet purposes, and sewer services from City water and sewer facilities 24 hours per day, seven days per week, at the points of supply operating in the NOC Premises at the Lease Commencement Date;
    - (ii) Electricity ("**Electricity**") for lighting and operation of the NOC Premises, Head End Premises, and Satellite Dish Premises, including operation of computer servers, consoles, head-end equipment, electronics, components, and other equipment located in the NOC Premises and operation of the Satellite Dish Equipment 24 hours per day, seven days per week;
    - (iii) Natural gas consistent with such services provided prior to the Lease Commencement Date;
    - (iv) To the NOC Premises and Head End Premises, heat, ventilation, and air conditioning services ("HVAC Service") sufficient to provide normal comfort and cooling of equipment substantially equivalent to the comfort and cooling provided by the City to the NOC Premises prior to the Lease Commencement Date during normal business hours of the Customer Service Center and to the Head End Premises 24 hours per day, seven days per week (it being understand that Hotwire will be responsible for HVAC Service to the Thermobond Building);

- (v) To the NOC Premises and Head End Premises, janitorial services, trash collection, security, and elevator operation services consistent with those provided prior to the Lease Commencement Date.
- (b) Hotwire will pay or cause to be paid, or reimburse the City promptly upon demand, for, the City's costs ("Service Costs") of providing HVAC Services (including the cost of natural gas and Electricity used to provide HVAC Services) and Electricity attributable to Hotwire's use and occupancy of the NOC Premises, Head End Premises, and Satellite Dish Equipment, all determined pursuant to an independent annual assessment of such costs and expenses to be reasonably agreed by the City and Hotwire. Costs for HVAC Service will include, without duplication, the actual costs of Electricity used to operate the HVAC system, supplies, including coolant, refrigerant, filters, lubricants, and other consumables, and maintenance of HVAC Equipment, but will not include any amount attributable to depreciation of HVAC equipment installed in the Customer Service Center.
  - (i) The City will invoice Hotwire from time to time for any amounts to be reimbursed in respect of HVAC Services and Electricity and will afford Hotwire reasonable access to those books and records of the City supporting the determination of such amounts.
  - (ii) Hotwire may, at any time or times, cause an audit to be made of any such statement, may examine the relevant books and records of the City with respect to HVAC Services and Electricity. The cost of such an audit will be borne by Hotwire unless such audit shows that the City's statement of expenses was in error by 3% or more of the charges for such period, in which case the City will pay or reimburse Hotwire for the cost of such audit. Any such audit may be required by Hotwire at any reasonable time designated by Hotwire upon three days' prior written notice to the City.
  - (iii) If, as the result of any audit as provided in clause (ii) if this Section, Hotwire determines that the City's charge for HVAC Services or Electricity is incorrect, then Hotwire will pay the undisputed portion or any charge and the Parties will resolve such disagreement through the Independent Arbiter Procedure.
  - (iv) The City may, at its expense, cause any Electricity Service (including Electricity used in HVAC Services) to be separately metered and charged directly to Hotwire.
- (c) Hotwire will be responsible for the furnishing, installation, and maintenance of all telephone and telecommunication services and equipment that Hotwire may require for use and operation of the NOC Premises.
- (d) The City will not be liable for any loss, injury, or damage to property caused by or resulting from any variation, interruption, or failure of water and sewer services,

Electricity Services, or HVAC Services resulting from or due to any cause whatsoever, or from the City's failure to make any repairs or perform any maintenance with respect to the NOC Premises or Head End Premises. No temporary interruption or failure of services incident to the making of repairs, alterations, improvements, or due to accident, strike, or conditions or other events will be deemed an eviction of Hotwire or relieve Hotwire, by abatement of Rent or otherwise, from any of its obligations under the System Lease. In no event will the City be liable to Hotwire for any damage to the NOC Premises or Head End Premises, or for any loss or damages to any computers, servers, electronics, or other furnishings, equipment or other property therein or thereon, occasioned by bursting, rupture, leakage, or overflow of any plumbing, or other pipes (including water, steam, and refrigerant lines), sprinklers, tanks, drains, drinking fountains, or washstands, or other similar cause in, above, upon or about the NOC Premises or Head End Premises.

- 4.12 <u>Set-Off for Discriminatory Tax or Condemnation</u>. Hotwire will be entitled to a reduction in the payment of Rent and Additional Charges, and will be entitled to set off the amount of such reduction against any payment due, the portion of any *ad valorem* tax, other tax, assessment, or fee for which Hotwire is responsible or of any taking of property by power of eminent domain or condemnation, in each case to the extent such tax, assessment, or fee, or such taking (i) not imposed generally on other commercial property owners and businesses, and (ii) a primary purpose of which action is to alter or change the terms of the System Lease or the economic relationship of the Parties in a manner more favorable to the City.
- 4.13 No Set-Off, Abatement, etc. Except as provided in Section 4.12, Hotwire will remain bound by the System Lease in accordance with the terms of this Agreement and will not seek or be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent. Except as may be otherwise specifically provided in this Agreement, the respective obligations of the City and Hotwire will not be affected by reason of (i) any damage to or destruction of the System Assets or any portion thereof from whatever cause or any condemnation of the System Assets, or any Capital Improvement, or any portion thereof; (ii) other than as a result of the City's willful misconduct, the lawful or unlawful prohibition of, or restriction upon, Hotwire's use of the System Assets, any Capital Improvement or any portion thereof, the interference with such use by any Person or by reason of eviction by paramount title; (iii) any claim that Hotwire has or might have against the City by reason of any default or breach of any warranty by the City under this Agreement or under any other agreement between the City and Hotwire or to which the City and Hotwire are Parties; (iv) any bankruptcy, insolvency, reorganization, consolidation, readjustment, liquidation, dissolution, winding up or other proceedings affecting the City or any assignee or transferee of the City; or (v) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Hotwire from any such obligations as a matter of law. Hotwire hereby specifically waives and releases all rights arising from any occurrence whatsoever that may now or hereafter be conferred upon it by law (a) to modify, surrender or terminate the System Lease or quit or surrender the System Assets or any portion thereof, or (b) that may entitle Hotwire to any abatement, reduction, suspension, or deferment of the Rent or other sums payable by Hotwire hereunder except in each case as may be otherwise specifically provided in this Agreement. Notwithstanding the foregoing, nothing in this Section 4.13 will preclude Hotwire

from bringing a separate action against the City for any matter described in the foregoing clauses (ii), (iii) or (v), and Hotwire does not waive or release other rights and remedies not expressly waived or released in this Section 4.13. The obligations of the City and Hotwire under this Agreement are separate and independent covenants and agreements and the Rent and all other sums payable by Hotwire under this Agreement will continue to be payable in all events unless the obligations to pay the same are terminated pursuant to the express provisions of this Agreement or by termination of the System Lease as to all or any portion of the System Assets other than by reason of an Event of Default.

#### ARTICLE V

#### OWNERSHIP AND CONDITION OF SYSTEM ASSETS

- 5.1 System Lease Characterization. The City and Hotwire acknowledge and agree that they have executed and delivered this Agreement with the understanding that (i) the System Assets are the property of the City and constitute a "public enterprise" within the meaning of Chapter 160A, Article 16, of the North Carolina General Statutes, (ii) Hotwire has only the right to the possession, use, maintenance, and operation of the System Assets upon the terms and conditions of this Agreement, (iii) the System Lease is a "true lease" and an "operating lease," is not a financing lease, capital lease, synthetic lease, loan, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement, or other financing or trust arrangement, and the economic realities of the System Lease are those of a true lease, (iv) the System Lease is a "lease" within the meaning of Article 2A of the North Carolina Uniform Commercial Code, N.C.G.S. Sections 25-2A—101 et seq (the "UCC"), and a "lease" of an "enterprise" owned by the City within the meaning of 160A-321(a) of the North Carolina General Statutes; (v) the business relationship created by the System Lease and any related documents is and at all times will remain that of lessor and lessee, (vi) the System Lease has been entered into by each Party in reliance upon the mutual covenants, conditions, and agreements contained in this Agreement, and (vii) none of the agreements or undertakings contained in this Agreement is intended, nor will the same be deemed or construed, to create a partnership between the City and Hotwire, to make them joint venturers, to make Hotwire, agent, legal representative, partner, division, or subsidiary of the City, or to make the City in any way responsible for the debts, obligations or losses of Hotwire.
  - (a) Hotwire acknowledges that, subject to Section 8.10(a), it will not be entitled to any depreciation deduction or tax credit attributable to ownership of the System Assets. The City and Hotwire acknowledge that the System Assets, as property of the City, are exempt from property tax pursuant to Article 2, Section 3(2) of the North Carolina Constitution and, as a communications network owned by a city, to the extent provided in Section 160A-340.5 of the North Carolina General Statutes; provided, however, that the City may be required in certain circumstances to pay to Rowan County an amount in lieu of property taxes that would otherwise have been due Rowan County but for such exemption. Neither the City nor Hotwire will (i) file any tax return, report, or other associated documents; (ii) file any other document with or submit any document to any governmental body or authority; (iii) enter into any contractual arrangement with any Person; or (iv) publish, release, or disclose any financial statements of

Hotwire, in each case in clauses (i) through (iv), that takes a position for tax purposes other than that the System Lease is a "true lease" and an "operating lease" with the City as the owner/lessor of the System Assets and Hotwire as the lessee of the System Assets.

- (b) The City and Hotwire acknowledge and agree that the Rent is the fair market rent for the use of the System Assets and was agreed to by the City and Hotwire on that basis.
- (c) Hotwire hereby waives and releases any claim or defense based upon the characterization of the System Lease as anything other than a true lease and a "lease" of all of the System Assets within the meaning of the UCC.
- 5.2 Condition of System Assets. Hotwire confirms that it has examined and otherwise has, and had prior to the execution and delivery of this Agreement, knowledge of the condition of the System Assets and that it has found and determined the System Assets to be in good order and repair and otherwise satisfactory for its purposes under this Agreement. Notwithstanding any examination or inspection made by Hotwire and whether or not any patent or latent defect or condition was revealed or discovered thereby, Hotwire is leasing the System Assets "as is" in their condition as of the Agreement Effective Date. Hotwire hereby waives and releases any claim or action against the City in respect of or related to the condition of the System Assets. including any defects or adverse conditions not discovered or otherwise known by Hotwire as of the Lease Commencement Date. THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE SYSTEM ASSETS OR ANY PART THEREOF, EITHER AS TO FITNESS FOR USE, DESIGN, OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY HOTWIRE INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. WITHOUT LIMITING THE FOREGOING, THE CITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE ADEQUACY OR FITNESS OF THE HVAC SYSTEM AND EQUIPMENT SERVING THE NOC PREMISES. HOTWIRE ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY RESPECTING THE CONDITION OF THE SYSTEM ASSETS. Notwithstanding the foregoing, nothing in this Section 5.2 will affect or limit the City's obligations pursuant to Section 7.2(e).

## **ARTICLE VI**

#### **USE AND OPERATION OF SYSTEM ASSETS**

6.1 Use of System Assets.

- During the Term of the System, Hotwire will have the exclusive right, subject to (a) Section 19.12, to use, and will be required to use, the System Assets for the marketing, offering, provision, routing, and delivery of Communication Services to businesses, residents, consumers, and other users (including governmental entities, schools, libraries and non-profit entities), or any of them, within the Grandfathered Fibrant Service Area (the foregoing, the "Intended Use"), and agrees that it will not use the System Assets for any purpose other than the Intended Use. "Grandfathered Fibrant Service Area" means the area within the corporate limits of the City as described in Sections 160A-340.2(a) and (c)(1); the service areas described in Section 160A-340.2(c)(3)b.; and any "unserved area" as determined by the North Carolina Utilities Commission in accordance with Section 160A-340.2(b), all such sections being of the North Carolina General Statutes. Hotwire will not use the System Assets or any portion thereof or any Capital Improvement thereto for any other use without the prior written consent of the City. Notwithstanding the foregoing, the City acknowledges that Hotwire will be integrating the Fibrant System into its network for redundancy, reliability and trafficking purposes and that networking traffic will flow to and from the System Assets and nationwide access points and such traffic is not a violation of this Section 6.1(a).
- (b) Hotwire will not commit or suffer to be committed any waste of the System Assets (including any capital improvement thereto), any Required Capital Improvements, or any Elective Capital Improvements, or cause or permit any nuisance thereon or to, except as required by law, take or suffer any action or condition that will diminish the capacity or ability of the System Assets, Required Capital Improvements, and Elective Capital Improvements to be used for the provision of Communications Services after the expiration or earlier termination of the Lease Term.
- (c) Hotwire will neither suffer nor permit the System Assets or any portion thereof to be used in such a manner as (i) might reasonably tend to impair the City's title thereto or to any portion thereof or (ii) may make possible a claim of adverse use or possession or an implied dedication of the System Assets or any portion thereof.
- (d) Except in instances of casualty or condemnation, Hotwire will continuously operate the Fibrant System and the System Assets, Required Capital Improvements, and Elective Capital Improvements for one or more of the activities constituting the Intended Use, in accordance with all Required Licenses, Legal Requirements, Prudent Communication Service Industry Practice, System Contract Requirements, and System Insurance Requirements.
- (e) Hotwire will have the right to receive all rents, profits, charges, and Communication Service Revenues arising from the Intended Use of the System Assets, including: (i) contract charges and tariffed rates to third parties on a wholesale basis, (ii) payments from customer or carriers for dark or dim fiber services. Notwithstanding the foregoing, upon the occurrence and during the

continuance of an Event of Default that is monetary in nature, the City will have, and Hotwire hereby grants and assigns to the City, the right to receive all rents, profits and charges arising from any sublease of or similar arrangement with respect to the System Assets (including any rights granted pursuant to a dark fiber agreement, a dim fiber agreement, or a co-location agreement), and all Communication Service Revenues, subject to Legal Requirements, and to apply such rents, profits, charges, and revenues to Rent as set forth in Section 13.2(d).

- 6.2 Communication Services. Throughout the Term of the System Lease, Hotwire will market, advertise, offer, and provide the following services ("Communication Services"): Voice Service, Data Center Service, Data Transport Service, Internet Service, Video Service, Dark Fiber Service, and other communication services to residential, business, consumer, or other customers or subscribers, and such other services and uses required to be or customarily performed or provided by the owners of distribution systems similar to the Fibrant System or as otherwise required by Legal Requirements (including the State Cable Television Franchise Act), all to the extent required to comply with Competitive Requirements and Prudent Communication Service Industry Practice and as otherwise required by Legal Requirements. All such Communication Services will be provided in compliance with Service Level Standards. Notwithstanding the foregoing, Hotwire may discontinue the provision of any Communication Service that it has determined in its reasonable judgment to be no longer economically feasible and no longer necessary to comply with Legal Requirements and Competitive Requirements; provided, however, that it may not discontinue a Communication Service without the consent of the City, which consent will not be unreasonably withheld.
- 6.3 Service Level Standard Penalties. Hotwire will maintain records of its compliance with the Service Level Standards in providing Communication Services and will, at the request of the City but no more frequently than quarterly, deliver to the City a Service Level Standard compliance report, which shall provide such information as the City may reasonably request to demonstrate Hotwire's compliance with the Service Level Standards, including standards applicable to system uptime, customer hold time, and service availability. Promptly after receipt of any such compliance report, the City will advise Hotwire in writing (which may be by email communication) of any deficiency or suspected deficiency in Hotwire's compliance with the Service Level Standards. Hotwire will acknowledge in writing (which may be by email communication) receipt of such notice from the City within two days of receipt thereof and will provide to the City, within five days of receipt of such notice, a plan to resolve any such deficiency within five business days. Hotwire will pay to the City, as an Additional Charge, a penalty of \$1,000 per day for each day after such five-day resolution period that Hotwire is not in compliance with the Service Level Standards. In addition, Hotwire will provide credits to subscribers of Communication Services for any day in which a Communication Service is not available and otherwise comply with Competitive Requirements with respect to Service Level Standards.
- 6.4 <u>No Management Control by City</u>. Nothing in the System Lease gives or grants, will give or grant, or is intended to give or grant to the City, either directly or indirectly, the power to direct or cause the direction of the management and policies of Hotwire.

#### **ARTICLE VII**

## MAINTENANCE, POLE AGREEMENTS, SERVICES, ETC.

- 7.1 Maintenance and Repair. Throughout the Lease Term:
  - (a) Except as required of the City in correcting pole attachments pursuant to Section 7.3 and maintenance of the Customer Service Center required of the City pursuant to Section 8.1, Hotwire, at its expense, will maintain, and keep in good repair, the System Assets, any Capital Improvements thereto, and every portion thereof, in each instance whether or not the need for such repairs occurs as a result of Hotwire's use, any prior use, the elements or the age of the System Assets and Capital Improvements. Without limiting the foregoing, Hotwire, at its expense, will be responsible for (i) coordinating with local, state or federal Governmental Authorities to execute moves and relocations of any System Asset, Capital Improvement, or Hotwire Property, (ii) complying with any other requirements instituted by such authorities in order to perform the Intended Use at the System Assets in accordance with Prudent Communication Service Industry Practice, (iii) repairing fiber and copper cuts on a timely basis, and (iv) replacing poles, conduits and such other System Assets as may be required from time to time in order to comply with its obligations under this Agreement.
  - (b) Hotwire will perform the maintenance and repair obligations under this Section 7.1 with reasonable promptness and make all reasonably necessary and appropriate repairs thereto of every kind and nature, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the Agreement Effective Date. All maintenance and repairs will be consistent with applicable Engineering Standards. In no event will Hotwire remove (except in the case of a replacement performed in accordance with the terms hereof) any System Asset (other than obsolete System Assets that are not material to the use or operation of the Fibrant System) without obtaining the prior written consent of the City, which will not be unreasonably withheld. Hotwire will not take or omit to take any action that could reasonably be expected to materially impair the value or the usefulness of the System Assets or any part thereof or any Capital Improvement thereto. Hotwire will provide, at its expense, periodic reports (no less than quarterly) to the City, as reasonably requested by the City from time to time, on operational matters in sufficient detail to enable the City to confirm that Hotwire is discharging its maintenance and other obligations under this Agreement. Without limiting the provisions of Section 7.1, the City will have the right to inspect the System Assets and Capital Improvements from time to time and to request and receive information from Hotwire, upon reasonable advance notice to Hotwire, to confirm that Hotwire is discharging its maintenance obligations under this Section 7.1.
  - (c) Not later than 90 days after the Lease Commencement Date, and thereafter not later than September 30 of each calendar year during the Lease Term, Hotwire will prepare and submit to the City, and review with the City, a proposed

maintenance plan for the following calendar year. Such plan will include expected maintenance and repair requirements and Hotwire's estimates of maintenance costs.

- (d) Except as provided in Section 8.1, the City will not under any circumstances be required to (i) build or rebuild any improvements of the System Assets; (ii) make any repairs, replacements, alterations, upgrades, restorations, or renewals of any nature to the System Assets, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto; or (iii) maintain or repair the System Assets in any way. Hotwire hereby waives and releases, to the fullest extent permitted by law, the right to make repairs at the expense of the City pursuant to any law in effect at the time of the execution of this Agreement or hereafter enacted.
- (e) Nothing contained in this Agreement and no action or inaction by the City will be construed as (i) constituting the consent or request of the City, expressed or implied, to any contractor, subcontractor, laborer, materialman, or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair, or demolition of the System Assets or any part thereof or any Capital Improvement thereto; or (ii) giving Hotwire any right, power, or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the City in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, claim, lien or other encumbrance upon the right, title, interest, or estate of the City in or to the System Assets, or any portion thereof or in or to any Capital Improvement thereto.
- (f) Hotwire will create and maintain all System Maintenance Records in accordance with Prudent Communication Service Industry Practice and consistent with Hotwire's creation and maintenance of such records for other communication systems operated by Hotwire or its Affiliates. Hotwire acknowledges and agrees that all System Maintenance Records, whether created by the City or by Hotwire, are and will be the property of the City and will be maintained by Hotwire within Hotwire's engineering systems and records during the Lease Term. Hotwire will provide the City with electronic access to and hard copies of System Maintenance Records upon the request of the City at such times and places as the City may reasonably request.

## 7.2 <u>Pole Agreements, etc.</u> Throughout the Lease Term, except as provided in Section :

(a) Hotwire will, at its expense, (i) maintain (or cause to be maintained) all Easements, Permits and Pole Agreements, including any franchise or right-of-way license agreements required by any Governmental Authority in connection with such Easements, Permits, and Pole Agreements, necessary for Hotwire's operation of the System Assets for the Intended Use, (ii) diligently perform, observe and enforce all of the terms, covenants and conditions of the Easements,

Permits, and Pole Agreements on the part of the City or Hotwire to be performed, observed, and enforced in all material respects, and (iii) not terminate, cancel or surrender any material Easements, Permits or Pole Agreements without the prior written consent of the Hotwire (such consent not to be unreasonably withheld).

- (b) Hotwire will have the right, on behalf of and as agent for the City, to modify any existing Easements, Permits, and Pole Agreements without obtaining the prior consent of Hotwire so long as such proposed modifications are on market terms and conditions and otherwise commercially reasonable; provided, however, that if any such modification would result in a percentage increase in the fees payable under such agreement that exceeds the percentage increase in the CPI Index for the year in which such modification is made over the CPI Index for the year in which such agreement was executed or last modified, Hotwire will consult with the City and allow the City to participate in discussions with the other party to any such agreement, in which event any such modification will be subject to the City's consent, which will not be unreasonably withheld, conditioned, or delayed. "CPI Index" means the Consumer Price Index All Urban Consumers, for the South urban area, as published by the Bureau of Labor Statistics of the United States Department of Labor.
- (c) Hotwire will pay, or cause to be paid, all fees, rents, and other payments required to be made under the terms of such Easements, Pole Agreements, and Permits (including any right-of-way license agreements) in accordance with Section 4.7(c) and all franchise fees or other amounts that may be required pursuant to the State Cable Television Franchise Act. Without limiting the foregoing, Hotwire will be responsible for the calculation and payment of all rent or other charges due under any Easements, Pole Agreements, or Permits with respect to the System Assets and will upon request promptly furnish evidence to the City confirming payment of such amounts (together with back-up calculations and information reasonably necessary to support the determination of any payment). The City and Hotwire acknowledge that Hotwire will be obligated to pay any required franchise fees.
- (d) In the event any pole owners exercise any audit rights under the Pole Agreements, Hotwire will, at its cost and expense, (x) comply with, participate and perform all of its obligations relating such audit requests, and (y) pay, or reimburse the City for, any charges and such other fees and penalties determined to be owed to a pole owner as a result of such audit, including any fees and penalties for back rent, safety violations, unauthorized attachments, and trespass. The City will, at Hotwire's request, enter into settlements, compromises, or modifications to Pole Agreements for audit disputes provided that (i) no Event of Default then exists, (ii) Hotwire promptly and with commercially reasonable diligence negotiates a settlement, compromise, or modification relating to such audit, (iii) the terms of such settlement, compromise, or modification do not impose any obligations on the City or impair the City's rights with respect to any System Asset, and (iv) any and all monetary amounts payable thereunder are Hotwire's sole responsibility and such amounts are paid in accordance with the terms of such settlement, compromise, or modification. Notwithstanding the foregoing, the City will not be

required to accept or enter into a settlement, compromise, or modification of a Pole Agreement in connection with an audit dispute involving amounts equal to or greater than \$100,000; provided, however, that the City will not unreasonably withhold its acceptance or approval of any such settlement, compromise, or modification.

- (e) Hotwire will maintain and make available to the City adequate books and records of all Permits, Easements, and Pole Agreements and all payments (and supporting documentation relating to such payments) made thereunder for no less than five years after the end of each calendar year with respect to the books and records maintained during such calendar year. Hotwire will maintain the books and records for the Permits, Easements, Pole Agreements in a manner consistent with the manner in which Hotwire or its Affiliates maintain similar books and records in other locations where Hotwire or such Affiliates offer Communications Services and in accordance with Prudent Communication Service Industry Practice. The City will have the right from time to time during normal business hours upon reasonable notice to Hotwire to examine and audit such books and records at the office of Hotwire or other Person maintaining such books and records and to make such copies or extracts thereof as Hotwire may request.
- (f) Notwithstanding any other provision of this Agreement,
  - (i) Hotwire will have the right to modify any existing Pole Agreements, or enter into new Pole Agreements, in its own name and behalf without obtaining the prior consent of Hotwire, so long as such proposed modifications are on market terms and conditions and otherwise commercially reasonable and that any such modified or new Pole Agreement specifically provide that it would be assignable, without the need for consent from the pole owner party thereto and at no cost to the City, to the City upon the expiration or termination of the System Lease; and
  - (ii) The City will have no liability to Hotwire, under this Agreement or otherwise, with respect to any Pole Agreement, or the termination of any Pole Agreement, including any such liability resulting from the System Lease, except to the extent any such liability results from the Pole Attachment Dispute (as defined in Section 7.3) or the subject matter thereof.
- 7.3 Pre-Lease Pole Attachment Liability. The City and Hotwire acknowledge that the City is a party to ongoing litigation in respect of claims that certain pole attachments were installed by the City's third-party design-builder in a manner inconsistent with applicable Legal Requirements (the "Pole Attachment Dispute"). Notwithstanding any other provision of this ARTICLE VII, the City will be responsible for, and will take such actions as the City in its sole discretion deems necessary, or as may be required by the pole owner, at the City's expense, to correct, re-locate, repair, or otherwise replace and pole attachments that were attached or installed prior to the date of this Agreement in a manner not in compliance with the applicable

Pole Agreement and Legal Requirements. Hotwire will permit the City such access to the Fibrant System and System Assets as are required to accomplish any such corrections, relocations, repairs, or replacements, as provided in Section 19.12(b). The City will have the right to enter into such settlements or compromises of the Pole Attachment Disputes, and effect such modifications to Pole Agreements, as it deems desirable in connection with the foregoing. The City will, and will cause any contractor engaged to effect the correction, re-location, repair, or replacement contemplated in this section, to cooperate with Hotwire with respect to scheduling of such work and other matters related thereto, so as not to cause any material interruption of, interference with, or disturbance of Hotwire's use and occupancy of the System Assets and operation of the Fibrant System for the Intended Use. The City will use commercially reasonable efforts in connection with any settlement or compromise of the Pole Attachment Dispute to afford Hotwire the opportunity to contract for or supervise the making of any such corrections, re-locations, repairs, or replacements. Nothing in this Section 7.3 will be deemed to grant to Hotwire any right to require the City to perform any work to correct, relocate, repair, or otherwise replace pole attachments not otherwise required by the pole owner.

- 7.4 <u>No Encumbrances</u>. Hotwire will not directly or indirectly create or allow to remain and will promptly discharge at its expense any Encumbrance upon the System Assets or any Hotwire Capital Improvement.
- 7.5 Encroachments. If any of the System Assets will, at any time, encroach upon any property, street or right-of-way, or shall violate any restrictive covenant or other agreement affecting the System Assets, or any part thereof or any Capital Improvement thereto, or will impair the rights of others under any easement or right-of-way to which the System Assets are subject, or the use of any of the System Assets or any Capital Improvement thereto is impaired, limited, or interfered with by reason of the exercise of the right of surface entry or any other provision of a lease or reservation of any oil, gas, water or other minerals and such encroachment or violation does not result from a breach by Hotwire of its obligations under this Agreement, then promptly upon the request of the City, each of Hotwire and the City, subject to their right to contest the existence of any such encroachment, violation or impairment, will protect, indemnify, save harmless and defend the other party hereto from and against 50 percent of all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys', consultants' and experts' fees and expenses) based on or arising by reason of any such encroachment, violation or impairment. In the event of an adverse final determination with respect to any such encroachment, violation or impairment, either (a) each of Hotwire and the City will be entitled to obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect the City or Hotwire or (b) Hotwire at the shared cost and expense of Hotwire and the City on an equal basis will make such changes in the System Assets, and take such other actions, as the City in the good faith exercise of its judgment deems reasonably practicable, to remove such encroachment or to end such violation or impairment, including, if necessary, the alteration of any of the System Assets, and in any event take all such actions as may be necessary in order to be able to continue the operation of the System Assets for the Intended Use substantially in the manner and to the extent the System Assets were operated prior to the assertion of such encroachment, violation or impairment

#### **ARTICLE VIII**

# **CAPITAL IMPROVEMENTS**

- 8.1 City Responsibility for Capital Improvements to Customer Service Center
  - (a) Subject to and except as set forth in ARTICLE XI and ARTICLE XII, the City will keep and maintain the roof and Structural Portions of the Customer Service Center including the Structural Portions of the NOC Premises and the Head End Premises and the HVAC equipment ("HVAC Equipment") serving the Customer Service Center, including the HVAC Equipment described on Schedule 8.1(a); provided, however, provided that Hotwire will give the City prior notice of the necessity for such repairs and that any damage thereto will not have been caused by any act or negligence of Hotwire, its employees, agents, invitees, subtenants, assignees or contractors, in which event the cost of the repair of such damage will be borne solely by Hotwire. "Structural Portions" means and will consist only of the foundation and members supporting the roof but will not include, by way of example, any of the following to the extent a part of or contained in the NOC Premises or Head End Premises: interior partition walls, the interior side of the building perimeter walls, doors, molding, window frames, trims, door frames and plate glass. Hotwire will promptly give the City written notice of any damage to the NOC Premises or Head End Premises requiring repair by the City pursuant to this Section 8.1(a). The City will not be liable for any damages resulting from its failure to make such repairs or improvements, unless such failure continues beyond a reasonable time after receipt of notice of the necessity for such repairs or improvements. In no event will the City be liable to Hotwire for any damages incurred by Hotwire resulting from any damage that the City is required to repair under this Section 8.1(a). Except as expressly set out in this Lease, the City will have no obligation to repair, maintain, alter, replace, or modify the Customer Service Center, or any part thereof, or any mechanical installation therein or serving same, or any other System Asset or Capital Improvement.
  - (b) The City will be responsible only for the cost of making repairs and improvements required of it pursuant to Section 8.1(a) and will not be liable for any special or other damages related to such repairs or improvements.
- 8.2 <u>Hotwire Responsibility for Capital Improvements</u>. Except as required of the City in correcting pole attachments pursuant to Section 7.3 and Capital Improvements to the Customer Service Center required of the City pursuant to Section 8.1, Hotwire will be responsible, at its expense, for the construction, installation, repair, and replacement of all Capital Improvements to the Fibrant System, any System Asset, and any Capital Improvements ("**Required Capital Improvements**") to the extent required by and in accordance with Prudent Communication Service Industry Practice, Engineering Standards, Required Licenses, Legal Requirements, System Insurance Requirements, System Contract Requirements, and Competitive Requirements. Hotwire will be responsible for all Required Capital Improvements whether or not the making of such improvements requires structural changes or replacements to any

System Asset or Capital Improvement or interferes with Hotwire's delivery of Communications Services. All Required Capital Improvements will comprise only new or completely reconditioned equipment, components, and material.

- 8.3 <u>Drops and NIDs</u>. Without limiting the generality of Section 8.2, Hotwire will cause the installation of all Drops and NIDs to be done, by an independent, qualified third-party contractor that shall be approved by the City, such approval not to be unreasonably withheld, conditioned, or delayed. All such installation will be done in accordance with all applicable Engineering Standards and the Drop Installation Guidelines set forth in Schedule 8.3, and subject to the terms and conditions set forth in this Section 8.3.
  - (a) If during any portion of the Lease Term Hotwire reasonably determines that an independent, qualified third-party contractor is not available to install Drops and NIDs, then Hotwire will install Drops and NIDs during such period in accordance with this Section 8.3 and Hotwire will be entitled to a credit against Rent in an amount equal to Hotwire's reasonable and actual costs incurred during such period for installing Drops and NIDs, as determined from time to time by an independent assessment of such costs and expenses to be reasonably agreed by the City and Hotwire. Hotwire's cost and expenses will include the actual cost of fiber, attachments, materials, and NIDs, and the reasonable cost of Hotwire's compensation allocable to Hotwire employees with respect to such installation services.
  - (b) All Drops and NIDS will become System Assets automatically, subject to no Encumbrances, upon completion of their installation, at no cost to the City, without any further action by Hotwire or the City; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City's ownership of such Drops and NIDs at any time after Hotwire has received a credit in full against Rent with respect thereto.
- 8.4 <u>Capital Improvements to Outside Plant</u>. Without limiting the generality of Section 8.2, Hotwire will construct and install all Capital Improvements to the Outside Plant necessary for the provision of Communication Services by the Fibrant System. All Required Capital Improvements to the Outside Plant will become System Assets automatically, subject to no Encumbrances, upon completion of their installation, at no cost to the City, without any further action by Hotwire or the City; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City's ownership of such Capital Improvements at any time after Hotwire has received a credit in full against Rent with respect thereto.
- 8.5 <u>Customer Premises Equipment</u>. Without limiting the generality of Section 8.2, Hotwire will construct and install all Capital Improvements necessary for the repair or replacement of any Customer Premises Equipment and install Customer Premises Equipment necessary for the provision of Communication Services to new customers, all as required by and in accordance with Prudent Communication Service Industry Practices and Competitive Requirements. All such Customer Premises Equipment and related Capital Improvements thereto installed by

Hotwire will remain the property of Hotwire, will not become System Assets, and will be deemed Required Capital Improvements subject to City's option to acquire such improvements upon expiration or termination of the Lease Term and otherwise treated in accordance with Section 8.11(b).

- 8.6 <u>Elective Capital Improvements</u>. During the Lease Term, subject to Section 8.8, Hotwire will have the right, but not the obligation, to construct, install, repair, or replace any capital improvement to any System Asset or Hotwire Property that is (i) not a Required Capital Improvement and (ii) is functionally and structurally independent of other System Assets so that such improvement could be removed without materially damaging or interfering with operation of the Fibrant System (an "Elective Capital Improvement"). All Elective Capital Improvements will comprise only new or completely reconditioned equipment, components, and material.
- 8.7 <u>Public Bond Requirements; Public Bidding Requirements.</u> Hotwire agrees that it will comply, as if it were a municipality, with all bond requirements and bidding and other requirements with respect to contracting for or procurement of goods and services that are applicable to the City in connection with Hotwire's acquisition of or contracting for the installation and construction of Drops and NIDs, Extensions, Data Center capital improvements, and any other capital equipment or improvement that will become a System Asset upon completion of such construction or installation. Without limiting the foregoing, Hotwire will comply with:
  - (a) the North Carolina "Little Miller Act," Sections 44A-25 through 44A-39 of the North Carolina General Statutes:
  - (b) Sections 143-129 and 143-131 of the North Carolina General Statutes/
- 8.8 <u>Required City Approval</u>. Notwithstanding any other provision of this ARTICLE VIII, Hotwire will not, at any time during the last five years of the Initial Term or the last five years of the Renewal Term, construct, install, repair, or replace any Required Capital Improvement or Elective Capital Improvement that would reasonably be expected to cost more than \$500,000 without the prior written consent of the City, such consent not to be unreasonably withheld.
- 8.9 <u>Capital Improvement Plan</u>. Simultaneously with the delivery of the annual maintenance plan required pursuant to Section 7.1(c), Hotwire will prepare and submit to the City, and consult with the City with respect to, a proposed Capital Improvement plan for the following calendar year.
- 8.10 Capital Improvement Records; Annual Summary.
  - (a) Hotwire will create and maintain all Capital Improvement Records in accordance with Prudent Communication Service Industry Practice and consistent with Hotwire's creation and maintenance of such records for other communication systems operated by Hotwire or its affiliates. Hotwire acknowledges and agrees that all Capital Improvement Records, whether created by the City or by Hotwire, are and will be the property of the City and will be maintained by Hotwire within

Hotwire's engineering systems and records or tax and accounting records, as applicable, during the Term. Hotwire will provide the City with electronic access to and hard copies of Capital Improvement Records upon the request of the City at such times and places as the City may reasonably request.

- (b) Not later than March 30 of each calendar year during the Lease Term, Hotwire will prepare and submit to the City an Annual Capital Improvement Summary with respect to all Capital Improvements completed during the prior calendar year. Hotwire will consult with the City and provide such additional information as the City may request with respect to Capital Improvements described in such summary.
- 8.11 Ownership of Capital Improvements. Hotwire will retain ownership of all Required Capital Improvements (including improvements to NOC Furnishings and Equipment, Head End, and Satellite Dish Equipment) and Elective Capital Improvements, unless and until such improvements are conveyed or otherwise transferred to the City as provided in this Section 8.11
  - (a) Subject to Section 8.11(b), until any Required Capital Improvement or Elective Capital Improvement becomes a System Asset or is otherwise transferred or conveyed to the City, Hotwire will be
    - (i) entitled to any depreciation deduction or federal or state income tax credit attributable to ownership of Required Capital Improvements and Elective Capital Improvements installed by Hotwire; and
    - (ii) responsible for and pay, as and when due, all *ad valorem* tax, property tax, or similar tax, and any payment-in-lieu of any such tax assessed against or with respect to such Capital Improvements.
  - (b) Hotwire will not be entitled to any depreciation deduction or federal or state income tax credit attributable to ownership of any Drops and NIDs, any Capital Improvement to Outside Plant as set forth in Section 8.4, any Extension constructed or installed by the City, any Capital Improvement to provide Data Center Service as set forth in Section 4.5 or, upon such improvement's becoming a System Asset as provided in this Agreement, any other Capital Improvement that becomes a System Asset.
  - (c) Required Capital Improvements to the Outside Plant will automatically become System Assets, subject to no Encumbrances, automatically and without any further action on the part of either Hotwire or the City, upon the expiration or earlier termination of the Lease Term; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City's ownership of such Capital Improvements to the Outside Plant.
  - (d) Upon written notice to Hotwire delivered within 90 days after expiration or termination of the Lease Term, the City may purchase and Hotwire will transfer

and convey to the City, free and clear of all Encumbrances and by means of written documentation satisfactory to the City, all or any portion of Required Capital Improvements and Elective Capital Improvements constructed or installed by Hotwire (other than Drops and NIDS, Extensions, Capital Improvements to provide Data Center Service as provided in Section 4.5, and Required Capital Improvements to the Outside Plant). In consideration of such conveyance, the City will pay to Hotwire an amount equal to the Fair Market Value of such purchased Capital Improvements; provided, however, that if the Parties are unable to reach agreement as to the Fair Market Value of any such improvements within 60 days of delivery the City's written notice, such dispute will be submitted to and resolved by an Independent Appraiser as provided in Section 21.2.

- (e) With respect to any Required Capital Improvement or Elective Capital Improvement, or portion thereof, as to which the City does not exercise its option to reimburse Hotwire as provided in paragraph (d), or as to which the City provides written notice to Hotwire that it will not exercise such option, Hotwire will, within 90 days of expiration of the 90-day period specified in paragraph (c) or, if earlier, the date of delivery of the written notice specified in this paragraph (e), remove such Required Capital Improvements and Elective Capital Improvements from the System Assets and, following such removal, restore the System Assets as nearly as possible to their condition prior to such removal in accordance with Prudent Communication Service Industry Practice and applicable Engineering Standards. Any Required Capital Improvement or Elective Capital Improvement not removed from the System Assets as provided in this paragraph (e) will be deemed abandoned by Hotwire and remain the property of the City, at no cost to the City.
- 8.12 <u>Removal of System Assets</u>; <u>Assistance in Selling Removed System Assets</u>. Except to the extent provided in Section 7.1(b) or as provided in paragraph (a) herein below, Hotwire will in no event remove or detach any System Asset or any Hotwire Property (other than an Elective Capital Improvement), whether or not such System Asset is replaced by a Required Capital Improvement or Elective Capital Improvement.
  - (a) On or before the date six months after the Lease Commencement Date, Hotwire may, in its discretion, remove any Head End component that is a System Asset as of the Lease Commencement Date; provided, however, that Hotwire promptly replaces such removed Head End component in accordance with applicable Engineering Standards and that such replacement Head End component will be deemed a Required Capital Improvement.
  - (b) In connection with removing any System Asset that it is permitted to remove under the System Lease, Hotwire will restore the remaining System Assets and any Capital Improvement as nearly as possible to their condition prior to such removal in accordance with applicable Engineering Standards.
  - (c) Hotwire will use commercially reasonable efforts to effect the removal of any System Asset with the minimum damage or destruction to such removed System

Asset and will, at the request of the City, store such removed System Asset in an appropriate storage facility (at the expense of the City), and advise and assist the City in selling, trading in, or otherwise disposing of such removed System Asset.

## **ARTICLE IX**

# EXTENSIONS TO NEW GEOGRAPHIC AREA; ADDITIONAL COMMUNICATION SERVICES

# 9.1 Extensions Within Grandfathered Fibrant Service Area.

- At any time during the Lease Term, the City may, in the complete discretion of (a) and at the expense of the City, construct and install as part of the Fibrant System one or more extensions (an "Extension") of the Fibrant System to a geographic area or areas completely within the Grandfathered Fibrant Service Area in which Communication Services cannot be provided on an economically feasible basis at the Lease Commencement Date, in order to facilitate Communication Services to new residential subdivisions, business or industrial parks, commercial or industrial facilities, and other customers. The City will construct and install any such Extension in accordance with applicable Engineering Standards and cooperate with Hotwire and use commercially reasonable efforts to cause such construction and installation to be performed without materially interfering with Hotwire's providing of Communication Services. Any such Extension will automatically become a System Asset, subject to no Encumbrances, immediately upon its completion, without any further action by the City or Hotwire; provided, however, that Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City's ownership of such Extensions. Upon completion of the installation of any such Extension, Hotwire will configure and incorporate such extension into the existing Outside Plant in accordance with Prudent Communication Service Industry Practice and Engineering Standards.
- (b) At any time during the Lease Term, Hotwire may propose to the City that the City construct and install an Extension completely within the Grandfathered Fibrant Service Area. If the City declines so to construct and install such a proposed Extension, Hotwire may construct and install such Extension at its expense, in accordance with applicable Engineering Standards; provided, however, that Hotwire will not construct or install such Extension without the written consent of the City, which consent will not be unreasonably withheld, conditioned, or delayed. Any such Extension so constructed and installed by Hotwire will remain the property of Hotwire and will be deemed an Elective Capital Improvement for all purposes under the System Lease.
- 9.2 <u>Extensions Outside Grandfathered Fibrant Service Area</u>. In the event the City determines, in its sole discretion, that a change in applicable law, or in judicial interpretation of applicable law, permits the use of the System Assets for the provision of Communication Services to any geographic area outside the Grandfathered Fibrant Service Area, then the City

and Hotwire agree to negotiate in good faith with respect to any proposal by either the City or Hotwire to construct and install an Extension or otherwise use the System Assets for provision of such services outside the Grandfathered Fibrant Service Area.

9.3 Installation of Capacity for Wi-Fi, Additional Communication Services. At any time during the Lease Term, the City may propose to Hotwire that Hotwire construct and install such facilities and equipment as may be necessary to support the provision of "Wi-Fi" services pursuant to the federal or North Carolina "E-Rate" program or any similar program that the City deems beneficial to the residents of the Grandfathered Fibrant Service Area (such as Lifeline or USAC). If Hotwire constructs and installs such facilities and equipment at Hotwire's expense, such facilities and equipment will be deemed an Elective Capital Improvement. If Hotwire declines to construct and install such facilities and equipment at Hotwire's expense, Hotwire will, at the request of the City, construct and install such facilities at the City's expense, in which case such facilities and equipment will automatically become System Assets, subject to no Encumbrances, upon completion of their installation, without any further action by Hotwire or the City; provided, however, that, following payment in full by the City therefor, Hotwire will execute and deliver such assignments, conveyances, and other instruments as the City may request to confirm and evidence the City's ownership of such facilities and equipment.

## **ARTICLE X**

# **RISK OF LOSS; INSURANCE**

- 10.1 <u>Risk of Loss</u>. Hotwire hereby assumes and agrees to bear the risk of loss or of decrease in the enjoyment and beneficial use of the System Assets (other than the Customer Service Center), Required Capital Improvements, and Elective Capital Improvements as a consequence of damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by the City and Persons claiming from, through or under the City), at any time during the Lease Term. Except as otherwise provided in this Agreement, no such event will entitle Hotwire to any abatement of Rent.
- 10.2 <u>Casualty Insurance</u>. Except as set forth in this Section 10.2, Hotwire will not be required to obtain and maintain insurance against loss or damage to any System Asset or any Hotwire Property.
  - (a) If at any time (i) the City does not maintain insurance on the NOC Furnishings and Equipment, Head End, Satellite Dish Equipment, or Fibrant Vehicles pursuant to the City's option to maintain such insurance pursuant to Section 10.6 and (ii) Hotwire's Tangible Net Worth is less than 200% of the full replacement cost of all NOC Furnishings and Equipment, Head End, Satellite Dish Equipment, and Fibrant Vehicles, then Hotwire will, promptly upon request by the City, obtain and pay all premiums with respect to a policy or policies covering such risks as are ordinarily insured against for similar properties and in compliance with Prudent Communication Service Industry Practice and all Legal Requirements. Such insurance will in any event include "all risk coverage" and be

in an amount not less than the full replacement cost of the NOC Furnishings and Equipment, Head End, Satellite Dish Equipment, and Fibrant Vehicles; provided, however, that such policy may have a deductible amount of not more than \$100,000. Full replacement cost will be determined at least once every three years by an insurance consultant selected and paid for by the City, who is reasonably acceptable to Hotwire. "Tangible Net Worth" means the total consolidated assets of Hotwire and its wholly owned subsidiaries, less intangible assets, and less total consolidated liabilities of Hotwire and its wholly owned subsidiaries, all as reflected in Hotwire's financial statements as described Section 19.5(a)19.4(d)(ii). Hotwire will, from time to time upon the request of the City, certify to the City the amount of its Tangible Net Worth. Each insurance policy obtained in accordance with this Section 10.2(a) will contain a replacement cost endorsement acceptable to the City. No such policy of insurance will be written so that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent of the City.

- (b) During such time as Hotwire is constructing, installing, replacing, or repairing any Required Capital Improvements or Elective Capital Improvements, Hotwire will obtain and maintain a completed operations endorsement to the liability insurance policy referred to in Section 10.3(a).
- (c) Except to the extent required to comply with Prudent Communication Service Industry Practice in existence at any time during the Lease Term, Hotwire will not be required to obtain insurance with respect to the Outside Plant under this Section 10.2.
- 10.3 <u>Liability Insurance</u>. At all times during the Lease Term, at its own expense, Hotwire will obtain and maintain the following insurance to the extent required by Prudent Communication Service Industry Practice, but with coverage amounts no less than set forth in this Section 10.3:
  - (a) insurance against loss or damage insuring claims for personal injury or property damage under a policy of comprehensive general liability insurance and contractual liability (including coverage insuring the obligations of Hotwire under the terms of the System Lease) with amounts not less than \$1,000,000 each occurrence, \$1,000,000 damage to rented premises, \$10,000 medical expense (any one person), \$1,000,000 personal and advertising injury, \$2,000,000 general aggregate, \$2,000,000 products-completed operations aggregate, all the foregoing with umbrella liability coverage on an occurrence (as opposed to claims-made) basis in the amount of not less than \$15,000,000 each occurrence and \$15,000,000 aggregate; and
  - (b) insurance against automobile liability, covering all owned autos, hired autos and non-owned autos (including any such that is a System Asset) with amounts not less than \$1,000,000 combined single limit (each accident) and \$1,000,000 uninsured motorist.

- 10.4 <u>Workers' Compensation Insurance</u>. At all times during the Lease Term, at its own expense, Hotwire will obtain and maintain worker's compensation insurance covering all employees of Hotwire working at the Fibrant System, including any employees working on the construction, installation, repair, or replacement of any Capital Improvement, in such amounts as are required by Legal Requirements and Prudent Communication Service Industry Practice but in no event less than \$1,000,000 employer's liability each accident, \$1,000,000 employer's liability disease each employee, and \$1,000,000 employer's liability disease policy limit.
- 10.5 <u>Policy Requirements</u>. All of the policies of insurance referred to in this ARTICLE X will be written in a form reasonably acceptable to the City, and be issued by insurance companies with a minimum policyholder rating of "A-" and a financial rating of "VII" in the most recent version of Best's Key Rating Guide, or a minimum rating of "BBB" from Standard & Poor's or equivalent.
  - (a) Hotwire will deliver to the City, on or before the Lease Commencement Date, and on or before each anniversary of the Lease Commencement Date, copies of all required policies of insurance or certificates of insurance, in form reasonably satisfactory to the City, confirming that all such policies remain in force, including all endorsements and declarations required under the System Lease.
  - (b) All policies will contain an endorsement prohibiting cancellation or failure to renew unless the insurer first gives the City 30 days' prior written notice of such proposed action.
  - (c) All policies provided under Section 10.2 will expressly waive any right of subrogation on the part of the insurer against the City and any System Bond Financing Party and will name the City and any System Bond Financing Party as insureds or loss payees, as their respective interests may appear.
  - (d) All policies provided under Sections 10.3 will name the City and any Bond Financing Party as additional insureds.
  - (e) If Hotwire obtains and maintains the liability insurance described in Section 10.3(a) on a "claims made" basis, Hotwire will provide continuous liability coverage for claims arising during the Lease Term. In the event such "claims made" basis policy is canceled or not renewed for any reason whatsoever (or converted to an "occurrence" basis policy), Hotwire will either obtain (a)"tail" insurance coverage converting the policies to "occurrence" basis policies providing coverage for a period of at least three years beyond the expiration of the Lease Term, or (b) an extended reporting period of at least three years beyond the expiration of the Lease Term.
  - (f) Hotwire will pay all of the premiums for such insurance policies, and deliver copies of such policies or certificates thereof to the City prior to their effective date (and with respect to any renewal policy, prior to the expiration of the existing policy), and in the event of the failure of Hotwire either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such

policies or certificates thereof to the City, at the times required, the City will be entitled, but will have no obligation, to effect such insurance and pay the premiums therefor, in which event the cost thereof, together with interest thereon at the Overdue Rate, will be reimbursed by Hotwire to the City upon demand therefor as an Additional Charge. Hotwire will obtain, to the extent available on commercially reasonable terms, the agreement of each insurer, by endorsement on the policy or policies issued by it, or by independent instrument furnished to the City, that it will give to the City 30 days' (or 10 days' in the case of non-payment of premium) written notice before the policy or policies in question will be altered, allowed to expire or cancelled; provided however, that if such endorsement cannot be obtained, then Hotwire will be required to deliver written notice of any cancellation to the City promptly following Hotwire having obtained knowledge of such cancellation (but in no event later than 10 days prior to the date of cancellation).

- (g) Notwithstanding anything to the contrary contained in this Section 10.5, Hotwire's obligations to obtain and maintain the insurance provided for herein may be brought within the coverage of a "blanket" policy or policies of insurance carried and maintained by Hotwire; provided that the requirements of this Section 10.5 (including satisfaction of any Bond Financing Party's requirements and the approval of the Bond Financing Party required under any System Bond Finance Contract) are otherwise satisfied, and provided further that Hotwire maintains specific allocations with respect to such blanket policies acceptable to the City.
- 10.6 Optional Insurance Obtained by City. The City may, at its expense, procure and maintain insurance covering fire and such other risks as are from time to time included in standard extended coverage endorsements, insuring in amounts reasonably determined by the City to be the full insurable value of the Customer Service Center, Head End, NOC Furnishings and Equipment, Satellite Dish Equipment, and Fibrant Vehicles (including to the extent such insurance may be available any of the foregoing that constitutes Required Capital Improvements or Elective Capital Improvements and including insurance of the type described in Section 10.2(b)) or such greater coverage as may be required under any System Bond Finance Contract.

## ARTICLE XI

## **CASUALTY**

11.1 <u>Property Insurance Proceeds</u>. All proceeds payable by reason of any property loss or damage to System Assets, Required Capital Improvements, and Elective Capital Improvements, or any portion thereof, including under any policy of insurance required to be carried under this Agreement, will be paid to the Bond Financing Party as required under a System Bond Finance Contract and, to the extent not required to be paid to the Bond Financing Party, to the City. Except with respect to proceeds payable by reason of property loss or damage to the Customer Service Center, the City will make such proceeds available to Hotwire upon request for the reasonable costs of preservation, stabilization, emergency restoration, reconstruction, replacement, and repair, as the case may be, of any damage to or destruction of

the NOC Furnishings and Equipment, Head End, Satellite Dish Equipment and, to the extent the City has insured same any Required Capital Improvements and Elective Capital Improvements. Hotwire will repair, reconstruct, or restore such damaged System Assets, Required Capital Improvements, and Elective Capital Improvements as required in Section 11.2. Any excess proceeds of insurance remaining after completion of such repair, or reconstruction, or restoration will be delivered to the City. All salvage resulting from any risk covered by insurance for damage or loss to the System Assets, Required Capital Improvements, or Elective Capital Improvements will be the property of the City. The City will have the right to prosecute and settle or compromise property insurance claims, provided that Hotwire will consult with Hotwire and keep Hotwire informed regarding the process of adjusting any insurance claims and any final settlement or compromise with the insurance company will be subject to Hotwire's consent, such consent not to be unreasonably withheld, conditioned, or delayed.

# 11.2 Hotwire's Obligations Following Casualty.

- (a) If during the Lease Term any of the System Assets (other than the Customer Service Center) or any Required Capital Improvements are materially damaged, whether or not by or from a risk covered by insurance carried by the City or Hotwire, Hotwire will promptly restore such damaged System Asset or Required Capital Improvement as nearly as possible to the condition of such asset immediately prior to the casualty, in accordance with Prudent Communication Service Industry Practice, Engineering Standards, and otherwise reasonably satisfactory to the City;
- (b) If Hotwire restores the System Assets or Required Capital Improvements and the cost of the repair or restoration exceeds the amount of proceeds received from the insurance required to be carried under this Agreement, Hotwire will provide to the City evidence reasonably acceptable to the City that Hotwire has available to it sufficient liquid funds to restore such System Asset;
- (c) If Hotwire has not completed the restoration of any affected System Asset or Required Capital Improvement and the full provision of Communication Services has not resumed or recommenced in a manner substantially equivalent to the provision of such services prior to the date of any casualty by the date that is the third anniversary of the date of such casualty, all remaining insurance proceeds and the unpaid deductibles will be paid to and retained by the City free and clear of any claim by or through Hotwire, together with interest on such amounts at the Overdue Rate from the date that the casualty occurred until paid.
- 11.3 <u>City's Obligations Following Casualty</u>. If during the Lease Term the Customer Service Center is materially damaged, whether or not by whether or not by or from a risk covered by insurance carried by the City, the City will promptly restore such damaged portion of the Customer Service Center as nearly as possible to the condition of such asset immediately prior to the casualty.

- 11.4 <u>No Abatement of Rent</u>. The System Lease will remain in full force and effect following any such casualty or damage to a System Asset and Hotwire's obligations to pay Rent and Additional Charges will remain unabated during the period required for adjusting insurance and completing repair and restoration. HOTWIRE HEREBY WAIVES AND RELEASES ANY STATUTORY OR OTHER RIGHT OF TERMINATION OF THE SYSTEM LEASE THAT MAY ARISE BY REASON OF ANY DAMAGE OR DESTRUCTION OF SYSTEM ASSETS.
- 11.5 <u>Insurance Proceeds Payable to Bond Financing Party</u>. Notwithstanding anything in this ARTICLE XI to the contrary, if and to the extent any Bond Financing Party is entitled to any insurance proceeds, or any portion thereof, pursuant to a System Bond Finance Contract, such proceeds will be disbursed, held, and applied in accordance with the terms of the System Bond Finance Contract.

## **ARTICLE XII**

## **CONDEMNATION**

- 12.1 <u>Total and Partial Takings; Restoration.</u>
  - (a) If the System Assets, or substantially all of the System Assets, are totally and permanently taken by Condemnation (a "**Total Taking**"), the System Lease will terminate as of the day before the date of completion of such Total Taking.
  - (b) If a portion, but less than substantially all, the System Assets are taken by Condemnation (a "**Partial Taking**"), the System Lease will remain in effect.
  - (c) If there is a Partial Taking of System Assets, and the System Lease remains in force and effect, the City will make available to Hotwire the portion of any Condemnation Award necessary for restoration of the System Assets subject to such Partial Taking. Whether or not such Condemnation Award is sufficient for such restoration, Hotwire will promptly restore such taken System Assets as nearly as possible to the condition of such taken System Assets immediately prior to such Partial Taking, in accordance with Prudent Communication Service Industry Practice and Engineering Standards and otherwise reasonably satisfactory to the City.
- 12.2 <u>Allocation of Condemnation Award</u>. Except as set forth in Section 12.1(c), the total amount of any Condemnation Award will belong to and be paid to the City; provided, however, that Hotwire will be entitled to pursue its own claim with respect to any Partial Taking or Total Taking for Hotwire's lost profits value and relocation expenses.
- 12.3 <u>Temporary Taking</u>. The taking of any System Asset will constitute a taking by Condemnation only when the use and occupancy by the taking authority has continued for longer than 180 consecutive days. During any shorter period, which will be a temporary taking, all the provisions of the System Lease will remain in full force and effect and any Condemnation Award allocable to the Lease Term will be paid to Hotwire.

12.4 <u>Condemnation Awards Payable to Bond Financing Party</u>. Notwithstanding anything in this ARTICLE XII to the contrary, in the event that any Bond Financing Party is entitled to any Condemnation Award, or any portion thereof, under the terms of any System Bond Finance Contract, such award will be applied, held and disbursed in accordance with the terms of the System Bond Finance Contract.

# **ARTICLE XIII**

## **DEFAULT**

- 13.1 Events of Default. Any one or more of the following will constitute an "Event of Default":
  - (a) Hotwire fails to pay
    - (i) any installment of Rent when due and such failure is not cured by Hotwire within 10 business days after written notice from the City of Hotwire's failure to pay such installment of Rent when due, or
    - (ii) any Additional Charge when due and such failure is not cured by Hotwire within 30 days after notice from the City of Hotwire's failure to pay such Additional Charges when due;
  - (b) Hotwire:
    - (i) admits in writing its inability to pay its debts generally as they become due;
    - (ii) files a petition in bankruptcy or a petition to take advantage of any insolvency act;
    - (iii) makes an assignment for the benefit of its creditors (provided, however, that any assignment, transfer, or conveyance permitted under Section 15.1 will not constitute a default);
    - (iv) consents to the appointment of a receiver of itself or of the whole or any substantial part of its property; or
    - (v) files a petition or answer seeking reorganization or arrangement under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;
  - (c) Hotwire is adjudicated as bankrupt or a court of competent jurisdiction enters an order or decree appointing, without the consent of Hotwire, a receiver of Hotwire or of the whole or substantially all of Hotwire's property, or approving a petition filed against Hotwire seeking reorganization or arrangement of Hotwire under the United States bankruptcy laws or any other applicable law or statute of the United

- States of America or any state thereof, and such judgment, order or decree is not vacated or set aside or stayed within 60 days from the date of the entry thereof;
- (d) Hotwire is liquidated or dissolved other than as otherwise expressly permitted by Section 15.1;
- (e) the estate or interest of Hotwire in the System Assets or any part thereof is levied upon or attached in any proceeding relating to more than \$100,000 and the same is not vacated, discharged, or stayed pending appeal (or bonded or otherwise similarly secured) within the later of 60 days after commencement of such levy or attachment or 30 days after receipt by Hotwire of written notice from the City, provided that such notice will be in lieu of and not in addition to any notice required under Legal Requirements;
- (f) except as a result of material damage, destruction or Condemnation of System Assets, Hotwire ceases operation of the System Assets or any substantial portion thereof for the Intended Use;
- (g) any of the representations or warranties made by Hotwire in this Agreement or in any officer's certificate provided to the City pursuant to this Agreement proves to be untrue when made in any material respect; <u>provided however</u>, that if the condition causing the representation or warranty to be untrue is susceptible of being cured, then such untrue representation will be an Event of Default hereunder only if such condition is not cured within 30 days of receipt of written notice of such breach by Hotwire from the City;
- (h) any Required License or any System Contract, in either case material to the operation of the System Assets for the Intended Use, is at any time terminated or revoked or suspended for more than 30 days and such termination, revocation, or suspension is not stayed pending appeal;
- (i) Hotwire, by its acts or omissions, causes the City to
  - (i) be in violation of Chapter 160A, Article 16 of the North Carolina General Statutes or any other Legal Requirement, and, if curable, such violation is not cured within 90 days of receipt by Hotwire of written notice by the City of such violations, or
  - (ii) lose the benefit of any exemption from the application of Sections 160A-340.1, 160A-340.4, 160A-340.5, or 160A-340.6 of the North Carolina General Statutes, including any determination by any Governmental Authority that any such acts or omissions by Hotwire result in the City's failing to limit the provision of Communication Service to the Grandfathered Fibrant Service Area, or
  - (iii) the occurrence of a default or event of default under any provision (to the extent Hotwire has knowledge of such provision and the City's obligations with respect thereto) of any System Bond Finance Contract, if the effect of

such default or event of default is to cause, or to permit any Bond Financing Party (or any trustee, receiver, or agent acting on behalf of such Bond Financing Party) with respect to such System Bond Finance Contract, to cause, such System Bond Finance Contract (or the indebtedness secured thereby) to become or be declared due and payable (or redeemable) prior to its stated maturity;

- (j) any event or condition occurs that
  - (i) results in any Hotwire Material Indebtedness becoming due prior to its stated maturity, or
  - (ii) enables or permits (with all applicable grace periods, if any, having expired) the holder or holders of any Hotwire Material Indebtedness or any trustee, receiver, or agent on its or their behalf to cause any Hotwire Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or exercise any other remedy (other than in the case of clauses (i) and (ii) any prepayment, repurchase, or redemption, arising out of or relating to a change of control or asset sale or any redemption, repurchase, conversion or settlement with respect to any indebtedness convertible into equity interests pursuant to its terms, provided that failure to consummate any such required prepayment, redemption, repurchase, conversion or settlement under any Hotwire Material Indebtedness will constitute an Event of Default), or
  - (iii) Hotwire fails to pay the principal of any Hotwire Material Indebtedness at the stated final maturity thereof (provided that this clause (iii) will not apply to secured indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such indebtedness if such sale or transfer is not prohibited by this Agreement or by the documents providing for such indebtedness);
- (k) one or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 (other than as covered by insurance to the extent a claim therefor has been made in writing and liability therefor has not been denied by the insurer) is issued or rendered against Hotwire or any Affiliate of Hotwire or any combination thereof and the same will remain undischarged for a period of 60 consecutive days, if at the end of such period execution will not be effectively stayed;
- (l) Hotwire fails fail to observe or perform any other term, covenant, or condition of this Agreement in any material respect that adversely affects the City and such failure is not cured by Hotwire within 30 days after written notice thereof from the City, unless such failure cannot with due diligence be cured within a period of 30 days, in which case such failure will not be deemed to be an Event of Default if Hotwire proceeds promptly and with due diligence to cure the failure and

- diligently completes the curing thereof within 120 days after such written notice from the City; provided, however, that such notice will be in lieu of and not in addition to any notice required under applicable law;
- (m) if (i) the Surety Bond is no longer in force and effect in accordance with its terms or (ii) if the City receives notice from the issuer of the Surety Bond that such bond will cease to remain in full force and effect in accordance with its terms and Hotwire has provided to the City evidence reasonably satisfactory to the City that such notice has been rescinded within 10 days of the City's receipt thereof; and
- (n) an Assignment or attempted Assignment, or a Sublease or attempted Sublease, of Hotwire's interest in the System Lease will have occurred without the consent of the City (except in respect of an Assignment to which the City's consent is not required under this Agreement such as the granting of rights to use a portion of the "dark fiber" in the Outside Plant for the provision of Data Transport Services).
- 13.2 <u>City's Default Remedies</u>. Upon the occurrence of any Event of Default as provided in Section 13.1, the City will have the option, exercisable in its sole discretion, to pursue and obtain any one or more of the following remedies, without any notice or demand whatsoever in addition to, and not in limitation of, any other remedy or right permitted it by law or equity or by the System Lease:
  - (a) The City may terminate the System Lease, in which event Hotwire will immediately surrender the System Assets (including any Capital Improvements) to the City and otherwise perform all actions and undertakings required of Hotwire pursuant to Section 17.3, and if Hotwire fails to surrender the System Assets, the City may, without prejudice to any other remedy that it may have for possession or arrearage in Rent, enter upon and take possession of the System Assets, and lock out, expel, or remove, in accordance with the law, Hotwire and any other person who may be occupying all or any part of the System Assets, including the NOC Premises and the Network Operations Center, without being liable for prosecution of any claim for damages. The System Lease and the Lease Term, as well as all of the right, title, and interest of Hotwire under this Agreement, will wholly cease and expire in the same manner and with the same force and effect as if the date of expiration were the date originally specified in this Agreement for the expiration of the System Lease and the Lease Term, and Hotwire will then guit and surrender the System Assets to the City. Upon such termination, Hotwire hereby agrees to pay to the City on demand, as liquidated damages:
    - (i) all Rent and Additional Charges accrued to the date of such termination, and:
    - (ii) an amount equal to the greater of (A) the Rent payable for 12 full Calendar Quarters immediately preceding such termination (adjusted as set forth in clause (iii), and (B) the maximum amount payable under the Surety Bond.

For purposes of computing Hotwire's liability under the foregoing provision,

- (iii) For purposes of determining the amount payable pursuant to Section 13.2(ii)
- (A) if such termination occurs prior to December 31, 2021, the amount set forth in Section 13.2(a)(ii)(A) will be the quotient obtained by dividing (I) the total of all the amounts of Rent that Hotwire was obligated to pay during the Lease Term prior to termination by (II) the number of full Calendar Quarters in such period; and
- (B) If such termination occurs less than 12 Calendar Quarters prior to the expiration of the Initial Term or Renewal Term, as applicable, the amount set forth in Section 13.2(a)(ii)(A) will be the product of the Rent payable for 12 full Calendar Quarters immediately preceding such termination and a fraction, the numerator of which is the number of Calendar Quarters or portions thereof remaining in the Initial Term or Renewal Term, as applicable, and the denominator of which is 12.

HOTWIRE ACKNOWLEDGES AND CONFIRMS, AND HOTWIRE AND THE CITY AGREE. THAT THE CITY WILL HAVE NO DUTY TO MITIGATE DAMAGES AND THAT THE CITY WILL NOT BE RESPONSIBLE OR LIABLE TO HOTWIRE FOR ANY FAILURE TO RE-RENT OR RE-LET THE SYSTEM ASSETS OR TO RESUME OPERATION OF THE FIBRANT SYSTEM. IF THE CITY DOES SO RE-RENT OR RE-LET THE PREMISES OR RESUME OPERATON OF THE FIBRANT SYSTEM, THE CITY WILL HAVE NO OBLIGATON OR LIABILITY TO HOTWIRE TO COLLECT ANY RENT OR OTHER PAYMENT DUE IN CONNECTION WITH ANY SUCH RE-RENTING OR RE-LETTING OR PROVIDE HOTWIRE ANY CREDIT OR OFFSET LIOUIDATED **AGAINST DAMAGES PURSUANT** TO PARAGRAPH (a) FOR OR IN RESPECT OF ANY SUCH RENT OR ANY AMOUNT RECEIVED BY THE CITY FROM OR IN CONNECTION WITH THE CITY'S OPERATION OF THE SYSTEM ASSETS OR FIBRANT SYSTEM.

HOTWIRE AND THE CITY ACKNOWLEDGE, CONFIRM, AND AGGREE THAT PAYMENT OF THE FOREGOING LIQUIDATED DAMAGES IS COMPENSATORY AND NOT PUNITIVE OR A PENALTY, SUCH AMOUNT BEING THE PARTIES' REASONABLE ESTIMATION OF THE ACTUAL LOSS THAT THE CITY WOULD INCUR AS A RESULT OF ANY SUCH EVENT OF DEFAULT. HOTWIRE AND THE CITY ALSO ACKNOWLEDGE THAT THE CITY'S ACTUAL DAMAGES IN RESPECT OF SUCH EVENT OF DEFAULT WOULD BE DIFFICULT TO DETERMINE.

- (b) Notwithstanding anything in Section 13.2(a) to the contrary, if at any time a court of competent jurisdiction determines that the waiver set forth in such section of the City's duty to mitigate damages or to be responsible or liable to Hotwire for any failure to re-rent or re-let the System Assets or to resume operation of the Fibrant System is invalid or unenforceable, in whole or in part, and whether as a result of the adoption of a statute or otherwise, then the City and Hotwire agree that Section 13.2(a)(ii) will automatically, and without any further action by either the City or Hotwire, be deemed modified and amended to read as follows: "an amount equal to the present value as of such termination (computed at a discount rate equal to the prime rate at the time (but not in excess of three percent (3%)), as announced in the Wall Street Journal) of the excess of (A) the stream of Rent and Additional Charges that the City would have received under the System Lease from the date of termination to the expiration date of the then-current Lease Term, determined as provided herein below, minus (B) the amount of such Rent loss that Hotwire can prove was reasonably avoidable by the City, taking into consideration the reasonable costs of re-letting the System Assets or the City's resuming operation of the Fibrant System, including, without limitation, reasonable brokerage commissions, the costs of any repairs necessary to the System Assets that otherwise would be or would have been Hotwire's responsibility under the System Lease, together with interest on such present value at the Overdue Rate, and any reasonable attorney's fees and expenses actually incurred. For the purpose of computing stream of Rent pursuant to clause (A) hereinabove, the quarterly Rent for which Hotwire will be liable after termination of the System Lease will be the quotient obtained by dividing (x) the total of all the amounts of Rent that Hotwire was obligated to pay during the entire period before such termination by (y) the number of full Calendar Quarters in such entire time. Hotwire will also pay a pro rata part of such quarterly Rent, based upon the length of time between the previous payment of Rent and the date of such termination, and any Additional Charges with respect to such pro rata portion of a Calendar Quarter; and upon such termination Hotwire will be obligated to submit to the City a statement accurately showing Communication Service Revenue, Rent, and Additional Charges for such portion of a quarter, together with such additional supporting financial records as the City may require."
- (c) Without terminating the Lease and without being liable for prosecution of any claim of damages therefor, the City may enter and take possession of the System Assets and perform whatever covenants Hotwire is obligated to do under the terms of the System Lease; and Hotwire agrees to reimburse the City on demand for any expenses including, without limitation, reasonable attorneys' fees, that the City may incur in thus effecting compliance with Hotwire's obligations under the System Lease. Hotwire further agrees that the City will not be liable for any damages resulting to Hotwire from such action, whether caused by negligence of the City or otherwise.
- (d) Without terminating the System Lease and without being liable for prosecution of any claim of damages therefor, the City may and enter upon and take possession

of the System Assets and expel or remove Hotwire and any other person who may be occupying the System Assets, or any part thereof including the Customer Service Center, by entry, dispossessory suit or otherwise, without thereby releasing Hotwire from any liability under the System Lease, and without being liable for prosecution or any claim of damages therefor and, if the City so elects, make such alterations, modifications, and repairs as in the City's sole judgment may be necessary to re-let the System Assets or permit the City to resume operation of the Fibrant System, including the offering and provision of Communication Services. The City may, but will be under no obligation to do so (except as may be provided by Legal Requirements), (i) re-let the System Assets or any portion thereof in the City's or Hotwire's name, but for the account of Hotwire, for such term or terms (which may be for a term extending beyond the Lease Term) and at such rental or rentals and upon such other terms as the City may deem advisable, with or without advertisement, and by private negotiations, and receive the rent therefor, or (ii) resume the operation of the System Assets and the Fibrant System, including the offering and provision of Communication Services, and collect and receive all revenues from or related to the provision of Communication Services. Hotwire hereby agrees to pay to the City the deficiency, if any, between all Rent reserved hereunder and the total rental applicable to the Lease Term actually obtained by such re-letting, if any, or the net revenues (after deduction of all applicable expenses, including all interest and finance cost incurred pursuant to any System Bond Finance Contract) actually received by the City from such resumed operation of the Fibrant System. In no event will Hotwire be entitled to any rentals received by the City or any amounts received by the City in respect of the operation of the Fibrant System in excess of the amounts due by Hotwire under the System Lease.

- (e) In the event the City terminates the System Lease, Hotwire will, upon demand, pay or reimburse the City for all costs incurred by the City in recovering the System Assets. Further, the City, in addition to all other rights and remedies it may have, will have the right to remove all or any portion of Hotwire's property (including any Hotwire Capital Improvements) from the System Assets and any property removed may be disposed of, at Hotwire's expense, in any manner the City deems reasonable or store such property at any public warehouse or elsewhere at the cost of and for the account of Hotwire, and the City will not be responsible for the care and safekeeping thereof. Hotwire hereby waives, and releases the City from any claim with respect to, any and all loss, destruction and/or damage or injury that may be occasioned by any of the aforesaid acts and agrees to indemnify the City for any loss, cost or liability incurred in connection with the exercise of the City's rights under this paragraph (e).
- (f) Hotwire hereby waives (to the extent legally permissible) any and all notices otherwise required under statutory or common law. To the extent of any inconsistency between this Agreement and any statutory or common law, it is the agreement of the Parties that this Agreement will prevail.

- No Waiver; No Election of Remedies, No Acceptance of Surrender. Pursuit of any of the foregoing remedies will not preclude pursuit of any other remedy provided in this Agreement or any other remedy provided by law or at equity, nor will pursuit of any remedy herein provided constitute an election of remedies thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any Rent or Additional Charges payable by Hotwire and due to the City under this Agreement or of any damages accruing to the City by reason of violation of any of the terms, covenants, warranties, and provisions of this Agreement. No re-entry or taking possession of the System Assets by the City or any other action taken by or on behalf of the City will be construed to be an acceptance of a surrender of the System Lease or an election by the City to terminate the System Lease unless express written notice of such intention is given to Hotwire. An election by the City to terminate Hotwire's right of possession without terminating the System Lease will not preclude the City from terminating the System Lease at any time thereafter by giving Hotwire written notice of intention to terminate the System Lease. Forbearance by the City from enforcing one or more of the remedies provided in Section 13.2 will not be deemed or construed to constitute a waiver of any Event of Default.
- 13.4 <u>Remedies Cumulative</u>. Any and all rights, remedies, options, and elections given in this Agreement to the City are and will be cumulative and in addition to any other right, remedy, option, or election under this Agreement, at law, or otherwise, without waiver of or in derogation of any right or remedy given to it under any law now or hereafter in effect.
- 13.5 <u>Default by City</u>. In the event of any default by the City under this Agreement, Hotwire's exclusive remedy will be an action for damages and Hotwire hereby waives and releases the benefit of any law granting it a lien upon or security interest of any kind in any property of the City or upon rent due the City. Prior to any such action, Hotwire will give the City written notice specifying such default with particularity, and the City will thereupon have a reasonable period, but in no event less than 30 days, in which to commence to cure any such default. Unless and until the City fails so to commence to cure any default after such notice or having so commenced thereafter fails to exercise reasonable diligence to complete such curing, Hotwire will have no remedy or cause of action by reason thereof. All obligations of the City under this Agreement will be construed as independent covenants and not as conditions.

# **ARTICLE XIV**

## HOTWIRE BANKRUPTCY

14.1 <u>Adequate Protection</u>. The City and Hotwire agree that, if Hotwire at any time becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding (a "Bankruptcy Proceeding") under the Federal Bankruptcy Code, 11 U.S.C. Paragraph 101 et seq., as now enacted or hereafter amended (the "Bankruptcy Code"), then "adequate protection" of the City's interest in the System Assets pursuant to the provisions of Sections 361 and 363 (or their successor sections) of the Bankruptcy Code prior to assumption and/or assignment of the System Lease by Hotwire will include, but not be limited to all (or any part) of, the following:

- (a) The continued payment by Hotwire of Rent, quarterly as and when due, of an amount equal to the greater of Rent for such quarterly period as provided in Section 4.2, and (ii) the Quarterly Rent Target (as defined in Section 17.1(b)) for such quarterly period, together with all Additional Charges and all other sums due and owing under the System Lease and the performance of all other covenants and obligations under the System Lease by Hotwire; and
- (b) The furnishing of a security deposit or Surety Bond by Hotwire in the amount of the Quarterly Rent Target for the quarter in which such proceeding was initiated.
- 14.2 <u>Adequate Assurance of Future Performance</u>. The City and Hotwire agree that, if Hotwire at any times becomes the subject of a Bankruptcy Proceeding, then "adequate assurance of future performance" by Hotwire and/or any assignee of Hotwire pursuant to Bankruptcy Code Section 365 (or its successor section) will include (but not be limited to) payment of an additional, new security deposit in the amount of the Quarterly Rent Target for the quarter in which such proceeding was initiated.

# 14.3 <u>Assignment in Bankruptcy</u>.

- (a) Any Person to which the System is assigned pursuant to the provisions of the Bankruptcy Code will assume, and will be deemed without further act or deed to have assumed, all of the obligations of Hotwire arising under the System Lease on and after the effective date of such assignment. Any such assignee will, upon demand by the City, execute and deliver to the City an instrument confirming such assumption of liability.
- (b) If this Agreement or the System Lease is assigned to any Person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment will be paid or delivered to the City, will be and remain the exclusive property of the City and will not constitute property of Hotwire or of the Estate of Hotwire within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting the City's property under the preceding sentence not paid or delivered to the City shall be held in trust by Hotwire (or any trustee or debtor-in-possession with respect to Hotwire) for the benefit of the City and will be promptly paid to or turned over to the City.
- (c) If in any Bankruptcy Proceeding Hotwire assumes the System Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any Person who will have made a *bona fide* offer to accept an assignment of the System Lease on terms acceptable to Hotwire, then notice of such proposed offer, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided to the City to ensure such Person's future performance under the System Lease, including without limitation the assurance referred to in Section 365(b)(3) of the Bankruptcy Code, will be given to the City by Hotwire no later than 20 days after receipt by Hotwire, but in any event no later than 10 days prior to the date

Hotwire will make application to a court of competent jurisdiction for authority and approval to enter into such assumption and assignment, and the City will shall thereupon have the prior right and option, to be exercised by notice to Hotwire given at any time prior to the effective date of such proposed assignment, to accept an assignment of the System Lease upon the same terms and conditions and for the same consideration, if any, as the *bona fide* offer made by such Person, less any brokerage commissions, finder's fees, or similar expenses that may be payable out of the consideration to be paid by such Person for the assignment of the System Lease.

- (d) Notwithstanding anything in this Section 14.3 to the contrary, nothing in this section will limit, modify, or affect the City's rights under Section 15.1.
- 14.4 <u>Payments Constitute Rent</u>. Notwithstanding anything in this Agreement to the contrary, all amounts payable by Hotwire to or on behalf of Hotwire under this Agreement, whether or not expressly denominated as "rent", shall constitute "rent" for the purposes of Section 502(b)(7) of the Bankruptcy Code.

## ARTICLE XV

# ASSIGNMENT AND SUBLETTING; CHANGE OF CONTROL

- 15.1 <u>Prohibition</u>. Without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed, Hotwire will not assign, transfer, or convey the System Lease, or its leasehold interest, or any other right, title, or interest of Hotwire in the System Assets or any part thereof, or sublease the System Assets or any part thereof, or mortgage, pledge, hypothecate, grant a security interest in or deed of trust or charge of any kind upon, its leasehold interest under the System Lease or grant any concession or license to use the System Assets or any part thereof; or enter into any assignment or sublease, except to a wholly owned subsidiary of Hotwire or any Affiliate of Hotwire. Any attempt by Hotwire to do any of the foregoing will be void and of no effect. The City will be deemed to have consented to any such assignment, transfer, conveyance, sublease, or grant if the City has not, within 60 days' of a written notice from Hotwire requesting the City's consent to such transaction, notified Hotwire that it would not so consent.
- 15.2 <u>Sale or Assignment by The City</u>. Except as and to the extent provided in Section 15.3, nothing in this Agreement will in any manner prohibit the City from (i) selling, assigning, transferring, or conveying (including as security) all or any part of its interest in the System Assets, or (ii) selling, assigning, transferring, or conveying (including as security) this Agreement or the System Lease. In the event the City sells, assigns, transfers, or conveys its entire ownership in the System Assets, the City will be relieved of and released from all further obligations under this Agreement. The covenants, conditions, and agreements contained in this Agreement will inure to the benefit of and be binding upon the City, its successors and assigns, and will be binding upon Hotwire, its successors and assigns, and inure to the benefit of Hotwire, and only such assigns of Hotwire to whom the assignment by Hotwire has been consented to by the City as provided in Section 15.1.

- 15.3 <u>Right of First Refusal</u>. The City hereby grants and conveys to Hotwire a right of first refusal (the "**Right of First Refusal**") to purchase the System Assets in accordance with the terms and subject to the conditions set forth in this Section15.3. Except as otherwise expressly provided in Section 15.3(e) below, the City will not sell or convey all or substantially all of the System Assets (the "**Sale Assets**") at any time during the period commencing on the Lease Commencement Date and ending on the date 12 years after the Lease Commencement Date (the "**First Refusal Period**"), except in accordance with the terms and conditions of this Section 15.3:
  - (a) If, during the First Refusal Period, the City receives a *bona fide* offer, or an acceptance of a *bona fide* offer made by the City (each, a "Purchase Offer") from any Person (the "Offering Purchaser") to acquire the Sale Assets and the City desires to accept such Purchase Offer, then the City will promptly provide written notice (a "Refusal Offer Notice") of such proposed Purchase Offer, together with a copy of such Purchase Offer, to Hotwire.
  - (b) If, during the period commencing on the date of delivery of the Refusal Offer Notice and ending 60 days thereafter (the "Refusal Consideration Period"), Hotwire delivers written notice (a "Refusal Exercise Notice") to the City that Hotwire elects to exercise its Right of First Refusal, accompanied by a binding, irrevocable offer to purchase the Sale Assets for the same price and on and subject to terms and conditions substantially the same in all material respects as set forth in the Refusal Offer Notice (which conditions may include the requirement of obtaining the approval of the City's voters in a referendum and satisfy other conditions precedent) and requiring Hotwire to purchase the Sale Assets for such price and on such terms and conditions within 180 days of its Refusal Exercise Notice.
  - (c) If either (i) Hotwire delivers written notice (a "Decline Notice") to the City of its intent not to exercise its Right of First Refusal as to such Refusal Offer Notice, or (ii) Hotwire does not deliver its Refusal Exercise Notice prior to expiration of the Refusal Consideration Period, then the City may, at any time during the one-year period commencing on the earlier of the Decline Notice and the expiration of the Refusal Period (the "Free Sale Period"), effect such sale for the same purchase price and upon terms and conditions substantially the same in all material respects as set forth in the Refusal Offer Notice, or on terms and conditions no less favorable to the City than those set forth in the Refusal Offer Notice.. The City may, in its discretion, extend the Free Sale Period for an additional period of no more than 180 days to permit satisfaction of conditions with respect to any required referendum, regulatory or other legal requirements, or third-party approval right.
  - (d) If such Fibrant System sale is not completed within the Free Sale Period, as and if extended by the City as provided in Section 15.3 (c), then the Right of First Refusal will be reinstated and the Sale Assets will continue to be subject to the Right of First Refusal and may not be transferred by the City thereafter except in compliance with this Section 15.3.

- (e) The Right of First Refusal and this Section 15.3 will not be applicable to any mortgage, deed of trust, conveyance or assignment as security, or any other conveyance or transfer, to a Bond Financing Party or to any sale or transfer of System Assets by a Bond Financing Party (or any trustee, collateral agent, or representative of a Bond Financing Party), whether pursuant to foreclosure, deed-in-lieu, or any other method, or to any Person who acquires System Assets, directly or indirectly, from a Bond Financing Party (or any trustee, collateral agent, or representative of a Bond Financing Party).
- Attornment. If the City, at any time during the Lease Term, enters into a System Bond Finance Contract that grants a security interest in or deed of trust, lien, charge, pledge, or other encumbrance upon the System Assets or any part thereof, and should the Bond Financing Party to any such System Bond Finance Contract succeed to the interest of the City in the System Assets, whether by foreclosure or enforcement of such security interest, by operation of law, or otherwise, Hotwire will be bound to such Bond Financing Party under all the terms, covenants, and conditions of this Agreement for the balance of the Lease Term after such succession. Hotwire agrees that, should any Bond Financing Party at any time require a separate agreement of attornment regarding the matters covered by this Agreement, then Hotwire will, within five days after request therefor, enter into any such "attornment agreement," provided the same does not materially and adversely modify any of the provisions of this Agreement and has no material adverse effect upon Hotwire's continued occupancy and operation of the System Assets.
- 15.5 <u>Subordination</u>. At any time during the Lease Term, upon request of the City, Hotwire will, within five days after such request, subordinate its rights under the System Lease to the lien, charge, pledge, or security interest of any System Bond Finance Contract with respect to the System Assets or any part thereof, and to all advances made or hereafter to be made upon the security thereof, and will execute a document evidencing such subordination. In connection with any such subordination, the City will use its reasonable efforts to obtain from any Bond Financing Party a non-disturbance agreement that provides that, so long as Hotwire is not in default in the payment of Rent or Additional Charges, or in the performance of any of the other terms of the System Lease, Hotwire's possession of the System Assets and Hotwire's rights under this Agreement will not be disturbed, diminished, or interfered with by such Bond Financing Party or by the purchaser of the System Assets in any foreclosure proceedings, provided that Hotwire agrees in writing to attorn such Bond Financing Party as provided in Section 15.4.
- 15.6 Notice to Bond Financing Party. If the System Assets are at any time during the Lease Term subject to any lien, charge, security interest, or pledge pursuant to a System Bond Finance Contract, then, in any instance in which Hotwire gives notice to the City alleging default by the City in performance of any covenant or obligation under this Agreement, Hotwire will also simultaneously give a copy of such notice to the Bond Financing Party under such System Bond Finance Contract (in the manner and at the address specified in any attornment agreement entered into by Hotwire with respect to such System Bond Finance Contract or as otherwise specified by the City in a written notice to Hotwire) and such Bond Financing Party will have the right (but no obligation) to cure or to remedy such default of the City during the same time that is permitted to the City under this Agreement for the remedying

or curing of such default, plus an additional period of 30 days. Hotwire will accept such curative or remedial action taken by a Bond Financing Party with the same effect as if such action had been taken by the City, and Hotwire will not seek damages from the City or any other relief by reason of any such default of the City if such Bond Financing Party will have cured or remedied such default within the time allowed in this Section 15.6 (including the aforesaid additional 30-day period) or is then attempting to foreclose its lien upon or obtain possession of the System Assets.

15.7 <u>Estoppel Certificate</u>. Within 10 days of delivery from the City to Hotwire of such agreement, Hotwire will execute an estoppel agreement, in customary form, as requested by any Bond Financing Party or existing or proposed purchaser of the System Assets.

## **ARTICLE XVI**

#### SURETY BOND

Surety Bond. On or before the Lease Commencement Date, Hotwire will deliver to the City a surety bond in the amount of \$3,000,000 and substantially in the form of Appendix 7 (the "Surety Bond"), as security for the faithful performance and observance by Hotwire of the terms, provisions, and conditions of the System Lease and the payment of Rent, Additional Charges, and other amounts payable by Hotwire under the System Lease. The Surety Bond will be issued by a surety licensed for the issuance of such bonds in the State of North Carolina and otherwise acceptable to the City. In the event of any Event of Default under this Agreement on the part of Hotwire, including any Event of Default resulting from the nonpayment of Rent or Additional Charges, the City may exercise any or all of its rights under the Surety Bond, including with respect to the payment of any Rent or Additional Charges and with respect any sum that the City may expend or may be required to expend by reason of Hotwire's default in respect of any of the terms, covenants, and conditions of this Agreement. If Hotwire will have fully and faithfully complied with all the terms, provisions, covenants, and conditions of this Agreement, the Surety Bond will be returned to Hotwire upon the occurrence of both of (i) the expiration or earlier termination of the System Lease and (ii) delivery of entire possession of the System Assets to the City as required under this Agreement.

## ARTICLE XVII

# **OPTIONAL EARLY TERMINATION; TRANSITION ARRANGEMENTS**

- 17.1 Optional Termination by City. The City will have the right to terminate the System Lease prior to the Expiration of the Lease Term, by written notice as provided in this Section 17.1, upon the occurrence of any of the following (the "Optional Termination Conditions"):
  - (a) At any time after December 31, 2018, upon 10 days' written notice to Hotwire (which notice may be given prior to December 31, 2018), if all Lease Conditions Precedent and City Lease Conditions Precedent, as set forth in Section 3.3, have not been satisfied prior to such date;
  - (b) At any time after December 31, 2020, upon 180 days' written notice to Hotwire if Hotwire fails to pay to the City, as Rent (net of Drop Installation Charges and any

other credit against Rent to which Hotwire is entitled under this Agreement), amounts at least equal to the applicable Yearly Rent Target for any two Reference Years in any 3-Year Annual Reference Period.

- (i) "Reference Quarter" means any Calendar Quarter during the Lease Term that commences after December 31, 2018.
- (ii) "Reference Year" means any period of four consecutive Reference Quarters.
- (iii) "3-Year Annual Reference Period" means any period of 12 consecutive Reference Quarters.
- (iv) "Quarterly Rent Target" means, with respect to any Reference Quarter, the amount set forth in the table on Appendix 7 with respect to such quarter.
- (v) "Yearly Rent Target" means, with respect to any Reference Year, the amount set forth in the table on Appendix 7 with respect to such Reference Year.
- (c) At any time during the Renewal Term, upon 365 days' written notice to Hotwire, if the City demonstrates that the continued performance of the System Lease could reasonably be expected to result in significant economic hardship to the City, become commercially impractical for the City, or otherwise make it practically impossible for the City to achieve the community and economic development purposes for which the Fibrant System was originally constructed; provided, however, that in no event will the City be permitted to terminate the System Lease if a principal purpose of such termination is to permit the City to enter into lease or sale of the Fibrant System on terms more favorable to the City than the System Lease; and, provided, further, that in the event Hotwire does not agree that the City has demonstrated such commercial impracticality or impossibility, then the City and Hotwire will submit such disagreement to an Independent Telecommunications Expert for resolution in accordance with the Independent Arbiter Procedure;
- (d) At any time during the Lease Term if a court of competent jurisdiction determines, in a final non-appealable order or judgment, that the execution or performance of any material term, covenant, or condition of this Agreement by the City would result in a material violation by the City of any Legal Requirement or would result in the City's loss of the benefit of any exemption from the application of Sections 160A-340.1, 160A-340.4, 160A-340.5, or 160A-340.6 of the North Carolina General Statutes, whether resulting from a change in law, any act or omission by Hotwire, for any reason; provided, however, that the City and Hotwire will use commercially reasonable efforts to modify the System Lease in a manner that would cure or eliminate such material violation or loss of benefits; and

- (e) Upon written notice given after the occurrence of an Incumbent Provider Change of Control, as determined pursuant to the following procedure:
  - (i) Hotwire will give the City written notice of the occurrence of any Incumbent Provider Change of Control or proposed Incumbent Provider Change of Control;
  - (ii) The City will be deemed to have consented to such Incumbent Provider Change of Control unless the City notifies Hotwire in writing, within 60 days after receipt of such written notice, that the City does not consent thereto because the City has determined that such Incumbent Provider Change of Control could reasonably be expected to result in significant economic hardship to the City, cause the System Lease to become commercially impractical for the City, or otherwise make it practically impossible for the City to achieve the community and economic development purposes for which the Fibrant System was originally constructed;
  - (iii) If the City provides notice of its decision not to consent to such Incumbent Provider Change of Control as provided in paragraph (ii), then Hotwire will be deemed to have consented to the City's objection and agreed not to complete such Incumbent Provider Change of Control unless Hotwire notifies the City within 30 days after receipt of the City's written notice of its determination not to consent that Hotwire disputes such determination;
  - (iv) If Hotwire provides timely notice that it disputes the City's determination, then the Parties will submit the disagreement to an Independent Telecommunications Expert for a determination of whether the City's refusal to consent to such Incumbent Provider Change of Control is reasonable, such determination to be made in accordance with the Independent Arbiter Procedure;
  - (v) If the Independent Telecommunications Expert determines that the City's refusal to consent was reasonable and Hotwire nonetheless completes such Incumbent Provider Change of Control, then the City, upon written notice to Hotwire given within 30 days after the Independent Telecommunications Expert delivers its final determination, terminate the System Lease upon 180 days' written notice.
- **"Incumbent Provider Change of Control"** means any transaction or transactions as a result of which Persons controlling, directly or indirectly, any other provider of Communication Services within the Grandfathered Fibrant Service Area obtain Control, directly or indirectly, of Hotwire.
- 17.2 Optional Termination by Hotwire. Hotwire will have the right to terminate the System Lease prior to the Expiration of the Lease Term at any time after December 31, 2018, upon 10 days' written notice to the City (which notice may be given prior to December 31, 2018), if all

Lease Conditions Precedent and Hotwire Lease Conditions Precedent have not been satisfied prior to such date.

- 17.3 <u>Transition Arrangements</u>. Upon expiration or termination of the Lease Term for any reason, including a termination upon an Event of Default, at the request of the City, Hotwire will cooperate with the City and take all actions reasonably necessary (including providing all assistance reasonably requested by the City in effecting a transfer of the System Assets and operational control of the Fibrant System to the City or to any successor Hotwire of the Fibrant System, and delivering to the City originals or copies of all Customer Records), all in an orderly manner so as to limit and reduce to the extent possible any disruption to the continued orderly operation of the Fibrant System and the provision of Communication Services through the System Assets. Without limiting the foregoing:
  - (a) Except with respect to Required Capital Improvements and Elective Capital Improvements as to which the City elects to reimburse Hotwire pursuant to Section 8.11(d), Hotwire will promptly vacate and surrender the System Assets (including all Capital Improvements that have been conveyed to or otherwise become System Assets) to the City in the condition in which such System Assets were originally received from the City and Capital Improvements were originally installed in the Fibrant System, except as repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Agreement and except for ordinary wear and tear.
  - (b) Hotwire will, promptly upon exercise by the City of its rights to acquire such Capital Improvements, transfer and convey to the City such Required Capital Improvements and Elective Capital Improvements as the City may elect to acquire, as provided in Section 8.11(d).
  - (c) Hotwire will assign and transfer to the City or such successor Hotwire such Fibrant System Contracts to which Hotwire is a party, including Subscriber Agreements, Easements, Permits, Pole Agreements, and agreements with third-party providers of content and services, as the City may request, to the extent such contracts may be assigned under their terms, and the City will assume all liabilities under such assigned contracts.
  - (d) At the request of the City, Hotwire will enter into a transition management agreement (the "Post-Term Transition Agreement"), in a form reasonably acceptable to both Parties, pursuant to which Hotwire will agree to continue to operate, or assist the City in the operation of, the Fibrant System in accordance with all Required Licenses, Legal Requirements, System Contract Requirements, System Insurance Requirements, Competitive Standards, and Prudent Communication Service Industry Practice; provided, however, that such standards will not in any case impose on Hotwire any cost or burden greater than the standards applicable during the Lease Term.
    - (i) The Post-Term Transition Agreement will be consistent with transition services provided by Hotwire in other dispositions and will include, as

- may be reasonably agreed by the Parties, limited licenses of non-transferable intellectual property, indemnification, limitations of liability, *force* majeure, and confidentiality provisions.
- (ii) The term of the Post-Term Transition Agreement will be 18 months, subject to the earlier termination of any service or of the entire agreement by the City, on 30 days' written notice. The Post-Term Transition Agreement will require the City to pay to Hotwire, as a management fee, 110 per cent of the reasonable and documented operating costs and expenses of providing services under such agreement, including Hotwire's standard allocated costs (applied consistently with Hotwire's allocation of costs to its other facilities) and any license fees paid by Hotwire for use of equipment, all of which costs and expenses will be evidenced by such back-up records and information as the City may reasonably request). Hotwire will license or otherwise make available to the City during such transition period, for no consideration other than the management fee provided in this Section 17.3(d)(ii), all Capital Improvements, including any Elective Capital Improvements, not previously transferred and conveyed to the City.
- (iii) Hotwire will make available to the City during such transition period such third-party programming and content and other third-party services used, offered, or provided by Hotwire during the 12-month period prior to such termination or expiration as the City may request, except to the extent prohibited by Legal Requirements or the terms of any agreement with such third-party providers binding on Hotwire. In the event Hotwire is prohibited from providing such services by Legal Requirements or such agreement terms, Hotwire will use its commercially reasonable efforts to procure similar services for the City from such third-party providers on the best terms and conditions reasonably available from such providers.
- (iv) The scope of transition services provided pursuant to such agreement will be those services reasonably requested by the City, including the following:
  - (A) Customer service and support including call center services;
  - (B) Network operations support;
- (C) Accounting, accounts payable, accounts receivable, billing and collections:
  - (D) Recordkeeping; and
- (E) Contract administration, including with respect to Pole Agreements.

- (e) During the transition period, at the request of the City, Hotwire will continue to employ, and make available to the City, all or substantially all of Hotwire's employees who had devoted a material amount of their time and efforts to the operation of the System Assets or the marketing, offering, and provision of Communication Services from the System Assets during the 12-month period prior to such termination or expiration.
- (f) Hotwire will, upon the request of the City, accept the resignation of any Hotwire employee who agrees to accept employment with the City in connection with the operation of the System Assets following such transition period.

# **ARTICLE XVIII**

# **EMPLOYEE TRANSITION MATTERS**

<u>Interim Period Employee Lease</u>. The City will use its commercially reasonable efforts to continue to employ those City employees who devote their primary time and efforts to the Fibrant System (the "Fibrant Employees") and make the Fibrant Employees available during the period commencing on the Lease Commencement Date and ending on the date six months after the Lease Commencement Date (such period, the "Employee Lease Period") to provide services consistent with those services provided by such employees to the Fibrant System prior to the Lease Commencement Date as Hotwire may reasonably request. The City will be responsible for all wages, salaries, and other compensation earned by Fibrant Employees during the Employee Lease Period and will continue to comply with its general employment policies and procedures with respect to such employees. The City acknowledges that Hotwire's agreement to enter into the System Lease and pay Rent as provided in this Agreement constitute full and adequate consideration for the lease of the Fibrant Employees. Hotwire will cooperate and consult with the City with respect to the need for the continuation of Employee Leased Services during the Employee Lease Period, and will advise the City whenever it determines, in its reasonable discretion, that the Employee Lease Services of any Fibrant Employee are no longer essential to Hotwire during the Employee Lease Period, or that any Fibrant Employee's services will not be required by Hotwire after termination of the Employee Lease Period. Hotwire agrees that the City may terminate or transfer any such Fibrant Employee during the Employee Lease Term.

# 18.2 Offers to City Employees.

(a) At any time during the Employee Lease Period Hotwire may, and on or before the date one month prior to the end of the Employee Lease Period Hotwire will, offer employment, at compensation and upon terms and conditions reasonably acceptable to such employees but subject to standard conditions of employment applicable to Hotwire's employees generally, to those Fibrant Employees selected by Hotwire in its reasonable discretion to continue providing services to the Fibrant System as Hotwire employees. Hotwire will offer to such employees, to the extent permitted by law and Hotwire's benefit plans, credit for prior service under the City's benefit plans and such other measures to facilitate the transfer of benefits as are in accordance with Prudent Communication Service Industry

- Practice. On or before the end of the Employee Lease Period, Hotwire will employ those Fibrant Employees who have accepted such offer of employment.
- (b) On or before the end of the Employee Lease Period, Hotwire will make available to all qualified Fibrant Employees who have not received, or who have not accepted, such an offer the opportunity to apply for employment by Hotwire or an Affiliate of Hotwire at Hotwire facilities other than the Fibrant System.
- (c) The City will provide or make available to Hotwire such records relating to the Transferred Employees as Hotwire may reasonably request, subject to any applicable laws and regulations including laws and regulations with respect to the privacy of personal information.

# **ARTICLE XIX**

## **CERTAIN COVENANTS**

- 19.1 <u>State Cable Television Franchise Act</u>. Throughout the Lease Term, Hotwire will keep and maintain its authority to construct and operate a cable system pursuant to Chapter 66, Article 42 of the North Carolina General Statutes (the "State Cable Television Franchise Act"), and will comply with all provisions and requirements of such Act, and of any agreement with respect to the provision of Communication Services entered into pursuant to or permitted by such Act.
- 19.2 <u>Parking Facilities</u>. The City hereby grants to Hotwire, for the Lease Term, the nonexclusive right to use up to 10 parking spaces in the City's parking lot adjacent to the Customer Service Center. Hotwire will cause its employees to park only in the parking spaces designated by the City for Fibrant System employees.
- 19.3 <u>Referendum.</u> On or before May 8, 2018, the City will take such actions as it reasonably determines necessary to permit the conduct of a "vote of the people" on the City's proposal to lease the System Assets to Hotwire, all as provided in Section 160A-321(a) of the North Carolina General Statutes.
- 19.4 <u>Assignment and Assumption of Existing Fibrant Contracts.</u>
  - (a) On or before the Lease Commencement Date, the City will assign to Hotwire its rights pursuant to the Assigned Contracts, and Hotwire will assume and agree to perform all liabilities and obligations arising under or relating to the Assigned Contracts that are required to be performed on or after the Lease Commencement Date. Hotwire will indemnify the City and hold the City harmless from all such assumed liabilities and obligations.
  - (b) On or before the Lease Commencement Date, the City and Hotwire will enter into an assignment and assumption agreement to effect such assignment and assumption, which agreement will contain such terms and conditions as are customary for similar transactions.

(c) To the extent that the City's rights under any contract or agreement that would constitute an Assigned Contract may not be assigned to Hotwire without the consent of another Person that has not been obtained, this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. The City will use its commercially reasonable efforts to obtain any such required consent(s) as promptly as possible and Hotwire will cooperate with the City in such efforts. If any such consent will not be obtained or if any attempted assignment would be ineffective or would impair Hotwire's rights under such contract or agreement, the City, to the maximum extent permitted by Legal Requirements and such contract or agreement, will act after the Lease Commencement Date as Hotwire's agent in order to obtain for it the benefits thereunder and will cooperate with Hotwire in any other reasonable arrangement designed to provide such benefits to Hotwire.

# (d) "Assigned Contracts" means the following:

- (i) Traffic Agreement executed as of July 12, 2010, between the North Carolina Department of Transportation and the City; and
- (ii) all Subscriber Agreements.

# 19.5 Financial Statements.

- (a) Hotwire will make available to the City for its review, from time to time upon request by the City and in such manner as the City and Hotwire reasonably agree, its audited consolidated balance sheet as of the end of its most recently completed fiscal year such calendar year and its unaudited consolidated balance sheet as of the end of its most recently completed fiscal quarter.
- (b) The City acknowledges that the foregoing balance sheets and the financial statements provided by Hotwire pursuant to Section 20.2(h) (collectively, the "Financial Statements" are "trade secrets" as defined in Section 66-152(3) of the North Carolina General Statutes that are being furnished to the City in connection with Hotwire's performance of a "public contract" and an "industrial development project" as described in Section 132-1.2(1)c. of the North Carolina General Statutes; and that Hotwire hereby designates all such Financial Statements as "confidential" within the meaning of Section 132-1.2(1)d of the North Carolina General Statutes. Hotwire agrees to mark each of such Financial Statements "confidential" at the time of their initial disclosure to the City. The City will treat all such Financial Statements as Hotwire's "Confidential Information" in accordance with Section 19.7.
- 19.6 <u>Customer Records</u>. The City will deliver to Hotwire at or prior to the Lease Commencement Date originals or copies of all customer records, including customer billing records, reasonably requested by Hotwire in connection with the delivery of Communications Services ("Customer Records"). Hotwire will retain and preserve all Customer Records in accordance with Prudent Communication Service Industry Practice.

## 19.7 Confidential Information.

- "Confidential Information" means all financial, technical, proprietary, (a) confidential, and other information, including data, reports, interpretations, forecasts, analyses, compilations, studies, summaries, extracts, records, knowhow, statements (written or oral) or other documents of any kind, that contain information concerning the business and affairs of a Party, which such party provides to the other Party, whether furnished before or after the date of this Agreement, and regardless of the manner in which it was furnished, and any material prepared by a Party, in whatever form maintained, containing, reflecting or based upon, in whole or in part, any such information; provided, however, that "Confidential Information" will not include information that: (i) was or becomes generally available to the public other than as a result of a disclosure by the other Party in breach of this Agreement; (ii) was or becomes available to the other Party on a non-confidential basis prior to its disclosure under this clause (ii) as evidenced by the written records of the other Party, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal or fiduciary duty; (iii) was independently developed by the other Party without the use of any Confidential Information, as evidenced by the written records of the other Party; or (iv) was disclosed to the City as System Maintenance Records pursuant to Section 7.1(f), Capital Improvement Records pursuant to Section 8.10(a), or as books and records of Easements, Permits, and Pole Agreements pursuant to Section 7.2(e). This Agreement, including the terms and conditions of the System Lease, is not Confidential Information.
- (b) The Parties recognize and acknowledge that they may receive certain Confidential Information of the other Party. Each Party agrees that neither such Party, during the period commencing on the date hereof and ending on the date five years after the term of the termination or expiration of the System Lease, directly or indirectly use any Confidential Information of the other Party or disclose Confidential Information of the other Party to any person for any reason or purpose whatsoever, except as reasonably required in order to comply with the obligations and provisions of this Agreement.
- (c) Notwithstanding anything to the contrary set forth in paragraph (b), in the event that a Party is requested or becomes legally compelled (pursuant to any legal, governmental, administrative or regulatory order, authority or process, including pursuant to Chapter 132 of the North Carolina General Statutes) to disclose any Confidential Information of the other Party, it will, to the extent reasonably practicable and not prohibited by law, provide the Party to whom such Confidential Information belongs prompt written notice of the existence, terms, or circumstances of such event so that the Party to whom such Confidential Information belongs may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section 19.7. In the event that such protective order or other remedy is not obtained or the Party to whom such Confidential Information belongs waives compliance with this Section 19.7, the

Party compelled to disclose such Confidential information will furnish only that portion of the Confidential Information or take only such action as, based upon the advice of its legal counsel, is legally required and will use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished. The Party compelled to disclose the Confidential Information will cooperate with any action reasonably requested by the Party to whom such Confidential Information belongs to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

- (d) The Parties agree that, except as required by law, no Party hereto will issue any press release relating to the terms of this Agreement without the prior written approval of the other Party, which approval may be granted or withheld in such Party's sole discretion.
- (e) Notwithstanding anything to the contrary in this Section 19.7:
  - (i) The City may include financial information and such information concerning the operation of the System Assets and, to the extent approved in writing by Hotwire, such approval not to be unreasonably withheld, Financial Statements furnished pursuant to Section 19.5(a), in offering memoranda, official statements, prospectuses, confidential information memoranda, or similar publications or marketing materials, rating agency presentations, investor presentations, or disclosure documents in connection with syndications, private placements, or public offerings of the City's debt securities, installment financing obligations, or other indebtedness, including any proposed System Bond Finance Contract. Hotwire agrees to provide such other reasonable information and, if necessary, reasonable participation in "road shows" and investor presentations at the City's sole cost and expense, with respect to Hotwire and the System Assets to facilitate a public or private debt offering or syndication by the City. The City will provide to Hotwire a copy of any information prepared by the City to be published in connection with the foregoing, and Hotwire will have a reasonable period of time (not to exceed three business days) after receipt of such information to notify the City of any corrections;
  - (ii) In addition to any disclosures permitted under clause (i), the City may disclose Confidential Information of Hotwire contained in the Financial Statements to any Bond Financing Party or proposed Bond Financing Party with respect to any existing or proposed System Bond Finance Contract, and to actual or prospective arrangers, underwriters, investors, or lenders with respect to an existing or proposed System Bond Finance Contract, and to rating agencies, accountants, attorneys and other consultants in connection with any existing or proposed System Bond Finance Contract; provided, however, that such Persons are advised of the confidential nature of such information and agree, to the extent such

information is not publicly available, to maintain the confidentiality thereof pursuant to this Section 19.7 hereof or pursuant to confidentiality provisions substantially similar thereto and to comply with all federal, state and other securities laws applicable with respect to such information;

(iii) The City may disclose Confidential Information regarding the System Lease and the operation of the System Assets, and to the extent the City determines it is reasonably necessary to do so, contained in Financial Statements to the City's independent auditors or to the Local Government Commission or any other agency or authority of the State of North Carolina with jurisdiction over the City.

# 19.8 Hazardous Substances.

- (a) Hotwire will not allow any Hazardous Substance to be stored or located in, on, under, or about any of the System Assets or incorporated in any way into any System Asset.
- (b) Hotwire will provide to the City, within five business days after Hotwire's receipt thereof, a copy of any notice, or notification with respect to, (i) any violation of an Legal Requirement relating to Hazardous Substances stored or located in, on, or under the System Assets or any adjacent property; (ii) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed or threatened with respect to the System Assets; (iii) any claim made or threatened by any Person against Hotwire or the System Assets relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Substance; and (iv) any reports made to any federal, state or local environmental agency arising out of or in connection with any Hazardous Substance in, on, under or removed from the System Assets, including any complaints, notices, warnings or assertions of violations in connection therewith.
- (c) If Hotwire becomes aware of a material violation of any Legal Requirement relating to any Hazardous Substance in, on, under or about the System Assets or any adjacent property, or if Hotwire, the City, or the System Assets become subject to any order of any federal, state or local agency to repair, close, detoxify, decontaminate or otherwise remediate the System Assets, Hotwire will immediately notify the City of such event and, at its sole cost and expense, cure such violation or effect such repair, closure, detoxification, decontamination or other remediation. If Hotwire fails to implement and diligently pursue any such cure, repair, closure, detoxification, decontamination or other remediation, the City will have the right, but not the obligation, to carry out such action and to recover from Hotwire, as Additional Charges, all of the City's costs and expenses incurred in connection therewith.
- (d) Hotwire will indemnify, defend, protect, save, hold harmless, and reimburse the City for, from and against any and all costs, losses (including, losses of use or

economic benefit or diminution in value), liabilities, damages, assessments, lawsuits. deficiencies. demands. claims and expenses (collectively, "Environmental Costs") (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on the City) incurred in connection with, arising out of, resulting from or incident to, directly or indirectly, before (except to the extent first discovered after the end of the Lease Term) or during (but not after) the Lease Term or such portion thereof during which the System Assets are leased to Hotwire (i) the production, use, generation, storage, treatment, transporting, disposal, discharge, release or other handling or disposition of any Hazardous Substances from, in, on or about the System Assets, including the effects of any of the foregoing on any Person or property within or outside the System Assets, (ii) the presence of any Hazardous Substances in, on, under or about the System Assets, and (iii) the violation of any Legal Requirement with respect to environmental matters.

# 19.9 <u>Indemnification</u>.

- In addition to the other indemnities contained in this Agreement, and (a) notwithstanding the existence of any insurance carried by or for the benefit of the City or Hotwire, and without regard to the policy limits of any such insurance, Hotwire will protect, indemnify, save harmless and defend the City from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorneys', consultants' and experts' fees and expenses (collectively, "Claims"), imposed upon or incurred by or asserted by third parties against the City by reason of: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the System Assets; (ii) any use, misuse, maintenance or repair by Hotwire of the System Assets; (iii) any failure on the part of Hotwire to perform or comply with any of the terms of this Agreement; (iv) the non-performance by Hotwire of any of the terms and provisions of any and all existing and future contracts and agreements with respect to the System Assets; (v) any claim for malpractice, negligence or misconduct committed by any Person on or working from the System Assets; and (vi) the violation by Hotwire of any Legal Requirement.
- (b) Subject to and to the extent permitted by Legal Requirements, including Sections 160A-321 and 160A-485 of the North Carolina General Statutes, the City will, to the fullest extent permitted by law, protect, indemnify, save harmless and defend Hotwire from and against all Claims imposed upon or incurred by or asserted by third parties against Hotwire by reason of: (i) any failure on the part of the City to perform or comply with any of the terms of this Agreement, including without limitation its obligations under Section 7.3; (ii) any claim for malpractice, negligence or misconduct committed by any employee or agent of the City on or working from the System Assets; and (iii) the violation by the City of any Legal Requirement
- (c) Any amounts that become payable under this Section 19.9 will be paid within 10 days after liability therefor is determined by a final non-appealable judgment

of a court of competent jurisdiction or settlement, compromise, or other agreement of the Parties, and if not timely paid will bear interest at the Overdue Rate from the date of such determination to the date of payment. The indemnifying Party, at its sole cost and expense, will contest, resist and defend any such claim, action or proceeding asserted or instituted against the indemnified Party. Neither Party will enter into any settlement or compromise with respect to any claim, action or proceeding for which the other Party has an obligation to indemnify such Party under this Section 19.9 without obtaining the prior consent of the indemnifying Party, which consent will not be unreasonably withheld. For purposes of this Section 19.9, any acts or omissions by a Party, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of such Party (whether or not they are negligent, intentional, willful or unlawful), will be attributable to such Party.

19.10 <u>Special and Consequential Damages</u>. IN NO EVENT WILL THE CITY OR HOTWIRE BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, DAMAGES BASED UPON A MULTIPLE OF REVENUES OR EARNINGS, OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES.

19.11 Force Majeure. No Party will be deemed in default of this Agreement for any delay or failure to fulfill any obligation (other than payment of Rent and any other payment obligation) so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of circumstances of Force *Majeure*. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) will be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision will, as soon as reasonably practicable after the occurrence of any such event, (i) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (ii) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement, as soon as reasonably practicable. Force Majeure means with respect to a Party, an event beyond the reasonable control of such Party (or any Person acting on its behalf), which event (1) does not arise or result from the fault or negligence of such Party (or any Person acting on its behalf) and (2) by its nature would not reasonably have been foreseen by such Party (or such Person), or, if it would reasonably have been foreseen, was unavoidable, and includes acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts, or, in the case of computer systems, any significant and prolonged failure in electrical or air conditioning equipment, or, solely to the extent the same was unavoidable and not in the control of a Party or the result of actions or omissions by a Party, interruptions or failures in service by a third-party service provider.

19.12 <u>City Access to System Assets</u>. Hotwire will permit the City or the City's agents

- (a) to inspect or examine the System Assets at any reasonable time, with 48 hours' advance notice;
- (b) to take such actions as the City determines to be necessary to address an emergency health or safety hazard or circumstance that threatens material damage to the System Assets; and
- (c) at any time, during regular business hours of Hotwire, with 48 hours' advance notice, to enter upon and show the System Assets to any prospective purchaser or successor Hotwire of the System Assets.

No such entry, construction, inspection, or examination will be construed as an eviction of Hotwire in whole or in part, and the Rent will in no manner abate while such repairs, alterations, improvements or additions are being made by reason of loss or interruption of the business of Hotwire because of the prosecution of such work.

- 19.13 Quiet Enjoyment. So long as the System Lease is in full force and effect, Hotwire will peaceably and quietly have, hold, and enjoy the System Assets for the Lease Term, free of any claim or other action by the City or anyone claiming by, through or under the City, but subject to all covenants, conditions, restrictions, easements, encumbrances and other matters affecting the System Assets as of the Lease Commencement Date or thereafter provided for in the System Lease or consented to by Hotwire. No failure by the City to comply with the foregoing covenant will give Hotwire any right to cancel or terminate the System Lease or abate, reduce, or make a deduction from or offset against the Rent, any Additional Charges, or any other sum payable under the System Lease, or to fail to perform any other obligation of Hotwire under this Agreement. Notwithstanding the foregoing, Hotwire will have the right, by separate and independent action, to pursue any claim it may have against the City as a result of a breach by the City of the covenant of quiet enjoyment contained in this Section19.13.
- 19.14 <u>Memorandum of Lease</u>. Upon the request of either Party, the City and Hotwire will (i) record this Agreement in the office of the Register of Deeds of Rowan County, North Carolina, or (ii) enter into a short-form memorandum of this Agreement, in form suitable for recording, and record such memorandum in such office. The Parties will share equally the out-of-pocket costs and expenses of recording this Agreement and/or any such memorandum. The Parties will fully cooperate with the City in removing from record any such memorandum upon the expiration or earlier termination of the Lease Term.

#### ARTICLE XX

#### REPRESENTATIONS AND WARRANTIES

- 20.1 <u>Representations and Warranties of City</u>. The City represents and warrants to Hotwire as follows:
  - (a) The City is a municipal corporation organized and existing under the Constitution and laws of the State of North Carolina;

- (b) The Constitution and laws of the State of North Carolina authorize the City to (i) execute and deliver this Agreement, and, subject to fulfillment of the conditions set forth in this Agreement, (ii) enter into the System Lease and other transactions contemplated by this Agreement, and (iii) carry out its obligations under this Agreement;
- (c) This Agreement has been duly and validly authorized, approved, executed, and delivered by the City, and, subject to fulfillment of the conditions set forth in this Agreement, the performance by the City of its obligations under this Agreement has been approved and authorized under all Legal Requirements and, assuming due authorization, execution, and delivery of this Agreement by Hotwire, constitute valid, legal, and binding obligations of the City, enforceable in accordance with their terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency, and other laws affecting the enforcement of creditors' rights generally. A resolution relating to the performance by the City of this Agreement and the transactions contemplated by this Agreement has been duly adopted by the City Council of the City, is in full force and effect, and has not been in any respect amended, modified, revoked, or rescinded;
- (d) Neither the execution and delivery of this Agreement, or any other documents related hereto or thereto, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions, or provisions or any charter provision or restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing; and
- (e) Except for the Pole Attachment Dispute, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the City (i) challenging the validity or enforceability of this Agreement or any other documents relating hereto or thereto or the performance of the City's obligations hereunder and thereunder, or (ii) either individually or in the aggregate, could reasonably be expected to have a material adverse effect on the City.

# 20.2 <u>Representations and Warranties of Hotwire</u>. Hotwire represents and warrants to the City as follows:

- (a) Hotwire is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania, and is duly qualified to transact business as a foreign limited partnership and in good standing in the State of North Carolina;
- (b) Hotwire has all requisite limited partnership power and authority to enter into this Agreement, to perform the System Lease and each of its obligations under this Agreement, and to consummate the transactions contemplated in this Agreement;

- (c) Hotwire has complied with all requirements for the award of a cable television franchise and commencement of cable television service under the State Cable Television Franchise Act; holds a valid franchise from the Secretary of State of the State of North Carolina granted under Section 66-351 of the North Carolina General Statutes; and otherwise has full power and authority to offer and provide Communication Services under this Agreement;
- (d) The execution and delivery of this Agreement by Hotwire, the consummation by Hotwire of each of the transactions contemplated in this Agreement, and the performance by Hotwire of each of its obligations under this Agreement have been duly and validly authorized by all necessary partner action on the part of Hotwire in compliance with the limited partnership agreement of Hotwire and all Legal Requirements. This Agreement has been duly executed and delivered by Hotwire, and, subject to fulfillment of the conditions set forth in this Agreement and, assuming due authorization, execution, and delivery of this Agreement by the City, constitute valid, legal, and binding obligations of Hotwire, enforceable in accordance with their terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency, and other laws affecting the enforcement of creditors' rights generally;
- (e) The execution and delivery of this Agreement by Hotwire and the consummation of each of the transactions and the performance of each of the obligations contemplated by this Agreement (i) do not conflict with, violate or breach (whether with or without notice a lapse of time or both), require the consent of any Person to or otherwise result in a material detriment to Hotwire under, (A) its limited partnership agreement and other organizational documents or (B) any agreement to which it is a party or by which its assets or property is bound or any Legal Requirement applicable to it;
- (f) No approval or consent is required from any Governmental Authority with respect to the entering into or performance by Hotwire of this Agreement or any other documents related hereto or thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained;
- (g) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting Hotwire (i) challenging the validity or enforceability of this Agreement or any other documents relating hereto or thereto or the performance of Hotwires obligations hereunder and thereunder, or (ii) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on Hotwire.
- (h) Hotwire has heretofore made available to the City its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2016, audited by and accompanied by the opinion of RSM US, LLP,, independent public accountants, and its unaudited consolidated balance sheet and related statements of income, stockholder's equity and cash

flows as of the end of and for the fiscal year ended December 31, 2017, and the then elapsed portion of the fiscal year, certified by its Director of Finance. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Hotwire Borrower and its consolidated Subsidiaries as of such date and for such period in accordance with GAAP, in the case of the unaudited statements subject to normal year-end audit adjustments and the absence of footnotes. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of Hotwire and its consolidated subsidiaries as of the date thereof.

(i) There has not occurred since December 31, 2016, any event, occurrence, change, state of circumstances or condition that, individually or in the aggregate has had or could reasonably be expected to have a Material Adverse Effect on Hotwire, its business, or operations, or on its ability to perform its obligations under this Agreement.

#### **ARTICLE XXI**

#### INDEPENDENT ARBITER PROCEDURE

- 21.1 <u>Certain Defined Terms</u>. The following terms will have the meanings set forth below for all purposes of this Agreement:
  - (a) "Independent Arbiter Procedure" means the procedure described in Section 21.2.
  - (b) "Independent Accountant" means an independent certified public accounting firm of recognized national or regional standing, which has experience and accounting expertise in Communication Services, and which has not previously been engaged by the City or Hotwire or otherwise has any material relationship with the City or Hotwire.
  - (c) "Independent Appraiser" means an appraiser or appraisal firm of recognized national or regional standing, which has experience and appraisal expertise in valuing and appraising equipment of the type included in Required Capital Improvements and Elective Capital Improvements, and which has not previously been engaged by the City or Hotwire or otherwise has any material relationship with the City or Hotwire.
  - (d) "Independent Arbiter" means an Independent Accountant, and Independent Appraiser, or an Independent Telecommunications Expert.
  - (e) "Independent Telecommunications Expert" means a Person (including a consulting firm) of recognized national standing, who has experience and expertise in the providing of Communication Services by broadband fiber-optic cable, and who has not previously been engaged by the City or Hotwire or otherwise has any material relationship with the City or Hotwire.

- 21.2 <u>Procedure</u>. In the Parties disagree or dispute any matter that is to be submitted to an Independent Arbiter pursuant to this Agreement, including without limitation pursuant to Sections 4.3, 4.5 4.6, 8.11(d), and 17.1(c), then either Party may provide a written notice (an "Independent Resolution Notice") to the other Party demanding that the matter will be submitted to an Independent Arbiter and determined pursuant to the following procedure (the "Independent Arbiter Procedure"):
  - (a) the City will promptly, and in any event within 30 days of delivery of such Independent Resolution Notice, appoint the Independent Arbiter, but such appointment will be subject to Hotwire's consent, which consent will not be unreasonably withheld, conditioned, or delayed;
  - (b) the City and Hotwire will jointly engage the Independent Arbiter pursuant to an engagement agreement on reasonable and customary terms, including that the City (subject to and to the extent permitted by Legal Requirements, including Section 160A-485 of the North Carolina General Statutes) and Hotwire would jointly indemnify the Independent Arbiter against claims customarily indemnified in such engagements;
  - (c) the City and Hotwire will each be responsible for half of the fees and expenses of the Independent Arbiter;
  - (d) if the Parties have not engaged the Independent Arbiter pursuant to this Section 21.2 within 45 days of the Independent Resolution Notice, then either Party will be entitled to petition the Superior Court of North Carolina in Rowan County, North Carolina, to appoint such Independent Arbiter pursuant to Section 1-569.11 of the North Carolina Revised Uniform Arbitration Act:
  - (e) resolution or determination of the matter submitted to the Independent Arbiter will be effected pursuant to such procedures as the Independent Arbiter may reasonably establish pursuant to such engagement agreement; and
  - (f) the resolution or determination by the Independent Arbiter will be binding and conclusive on the Parties for all purposes of this Agreement, absent manifest error by the Independent Arbiter.

#### ARTICLE XXII

#### MISCELLANEOUS PROVISIONS

- 22.1 <u>Survival</u>. Anything contained in this Agreement to the contrary notwithstanding, all claims against, and liabilities and indemnities of Hotwire or the City arising prior to the expiration or earlier termination of the Lease Term will survive such expiration or termination.
- 22.2 <u>Severability</u>. If any term or provision of this Agreement or any application thereof will be held invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby.

- 22.3 <u>Successors and Assigns</u>. This Agreement will be binding upon the City and its successors and assigns and, subject to the provisions of Section 15.1, upon Hotwire and its successors and assigns.
- 22.4 Governing Law. THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NORTH CAROLINA, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS AGREEMENT (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) WILL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.
- 22.5 <u>Jurisdiction and Venue</u>. The Parties agree that the Superior Court of North Carolina, in Rowan County, North Carolina, will be the exclusive jurisdiction and venue for all disputes under or related in any way to this Agreement, the performance hereof, and any transactions contemplated hereby, and that venue in such court is proper and convenient for the Parties.
- 22.6 <u>Entire Agreement</u>. This Agreement, and all annexes, appendices, exhibits, and schedules hereto, constitute the entire and final agreement of the Parties with respect to the subject matter hereof, and may not be changed or modified except by an agreement in writing signed by the Parties All prior or contemporaneous written or oral understandings, agreements, or negotiations relative to the leasing of the System Assets and the other matters contemplated in this Agreement are merged into and revoked by this Agreement.
- 22.7 <u>Counterparts; Facsimile Signatures</u>. This Agreement may be executed in any number of counterparts, each of which will be a valid and binding original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile transmission or transmission in portable document format (.pdf) will be as effective as delivery of an original manually executed counterpart of this Agreement.
- 22.8 <u>Interpretation</u>. Both Parties acknowledge that they have each been represented by counsel and this Agreement and every provision hereof has been freely and fairly negotiated. All provisions of this Agreement will be interpreted according to their fair meaning and will not be strictly construed against any Party.
- 22.9 <u>Time of Essence</u>. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH PROVISION HEREOF IN WHICH TIME OF PERFORMANCE IS ESTABLISHED.
- 22.10 <u>Further Assurances</u>. Each Party agrees to promptly execute and deliver all documents and instruments, and to take such further actions, as may be reasonably requested by the other Party to give effect to the provisions of this Agreement.
- 22.11 <u>Notice</u>. All notices and other communications hereunder must be in writing and will be deemed given (a) when received when sent by email or facsimile by the party to be notified, <u>provided</u>, <u>however</u>, that notice given by email or facsimile will not be effective unless either

(i) a duplicate copy of such email or fax notice is promptly delivered by a nationally recognized overnight delivery service (such as Federal Express), or (ii) the receiving party delivers a written confirmation of receipt for such notice either by email or fax or by delivery by such a nationally recognized overnight delivery service, in each case to the Party to be notified at the following address:

# To the City:

City of Salisbury 132 N. Main Street Salisbury, NC 28144 Attention: City Manager lbail@salisburync.gov

with a copy to: City of Salisbury 132 N. Main Street Salisbury, NC 28144 Attention: City Attorney rlawt@woodsonlawyers.com

#### To Hotwire:

Hotwire Communications, Ltd.
3 Bala Plaza E, Suite 700
Bala Cynwyd, PA 19004
Attention: Jonathan Bullock
jbullock@hotwirecommunication.com

with a copy to Hotwire Communications, Ltd. 3 Bala Plaza E, Suite 700 Bala Cynwyd, PA 19004 Attention: General Counsel

or to such other address as any Party may specify by written notice so given, and such notice will be deemed to have been delivered as of the date so telecommunicated.

22.12 <u>Third-party Beneficiaries</u>. Each of the City and Hotwire agrees that (a) their respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other Party hereto, in accordance with and subject to the terms of this Agreement, and (b) this Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

**IN WITNESS HEREOF**, the Parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

## **CITY OF SALISBURY**

**By:** // Al Heggins

Al Heggins, Mayor

HOTWIRE COMMUNICATIONS, LTD., doing business in North Carolina as Hotwire Communications of North Carolina, Limited Partnership

By: Hotwire Communications, LLC

its General Partner

**By:** // Kristin Johnson

Kristin Johnson, its Manager

#### **APPENDIX 1**

## **DESCRIPTION OF FIBRANT SYSTEM**

The Fibrant System is a fiber-optic broadband network owned and operated by the City of Salisbury, providing Internet, Video, and Voice services to approximately 3,500 residences and businesses in the Grandfathered Fibrant Service Area. The system's Outside Plant comprises approximately 353 miles of fiber-to-the-premises infrastructure, consisting of approximately 217 miles of aerial plant and 135 miles of underground plant, as more particularly shown in the attached Fibrant Fiber Map made a part of this Appendix. The system also includes the NOC and Head End, which are housed in the City's Customer Service Center at 1415 Martin Luther King, Jr., Boulevard, as more particularly described in Appendix 4, and certain Satellite Dish Equipment at 310 Hill Street, Salisbury, North Carolina. The system contracts with Momentum Wholesale LLC for delivery of certain telephone services and support and with NeoNova Network Services for telephone-based customer service and help desk support.

### **APPENDIX 2**

#### **DEFINITIONS**

- "3-Year Annual Reference Period" has the meaning set forth in Section 17.1(b)(iii).
- "2008 Certificates of Participation" has the meaning set forth in Recital B.
- "2013 Certificates of Participation" has the meaning set forth in Recital B.
- "2016 Deed of Trust" has the meaning set forth in Recital C.
- "2016 Installment Financing Contract" has the meaning set forth in Recital C.
- "Additional Charges" has the meaning set forth in Section 4.7.
- "Affiliate" means, with respect to Hotwire, any Person who or which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Hotwire.
- "Agreement Effective Date" has the meaning set forth in the preamble to this Agreement.
- "Annual Capital Improvement Summary" means a report showing the cost, location, completion date, and expected life of, and such other information as the City may reasonably request with respect to, each Capital Improvement installed or constructed during the preceding calendar year. Each Annual Capital Improvement Summary will identify Capital Improvements as either Replacement Capital Improvements or Elective Capital Improvements.
- "Assignment," with respect to the System Lease, means any sale, assignment, transfer, or other dispossession, including as collateral or security for any indebtedness or other liability, and including any leasehold mortgage.
- "Audit Claim" has the meaning set forth in Section 4.8(c).
- "Bankruptcy Code" has the meaning set forth in Section 14.1.
- "Bankruptcy Proceeding" has the meaning set forth in Section 14.1
- "Bond Financing Party" means Sun Trust Institutional or any other Person that provides credit to the City pursuant to any System Bond Finance Contract including the Bond Financing Party to the Refinance Contract.
- "Bond Refinance Contract" has the meaning set forth in Section 3.3(b)(i).

- "Calendar Quarter" means a three-month period commencing on the first day of January, April, July, and October. Rent and Additional Charges will be prorated as to any partial quarters at the beginning and end of the Lease Term.
- "Capital Improvement" means any equipment or component installed in or used in the operation of the Fibrant System, any extension, expansion, improvement of, addition to, replacement of, or overbuild of the Fibrant System or any System Assets, including fiber, that would be treated as a "capital asset" under applicable accounting principles, including without limitation any Required Capital Improvements and Elective Capital Improvements.
- "Capital Improvement Records" means cost records, invoices, purchase orders, construction and installation contracts, depreciation schedules, maps, drawings, and such other records as may reasonably be requested by the City to establish the cost and expected life of any Capital Improvement.
- "City" has the meaning set forth in the preamble to this Agreement.
- "City Council" means the council elected to govern the City pursuant to Section 160A-66 of the North Carolina General Statutes.
- "City Lease Conditions Precedent" has the meaning set forth in Section 3.3(b).
- "City Manager" means the manager of the City appointed by the City Council pursuant to Section 160A-147 of the North Carolina General Statutes.
- "Claims" has the meaning set forth in Section 19.9(a).
- "Communication Service" has the meaning set forth in Section 6.2.
- "Communication Service Revenue" has the meaning set forth in Section 4.2(b).
- "Competitive Requirements" means the offering and provision of Communication Services of a type and quality, and at a price, that are in all respects
- (i) competitive with the services offered by providers from time to time offering Communications Services in the City of Salisbury or other areas of Rowan County served by the System Assets; and
- (ii) no less favorable than the type, quality, and price of Communications Services offered by Hotwire or its Affiliates in other locations where Hotwire or such Affiliates offer Communications Services, taking into account differences in pricing of third-party content and products.
- "Condemnation" means the exercise of any governmental power, whether by legal proceedings or otherwise, by a state, city, municipality, or other Governmental Authority or a voluntary sale

or transfer by the City to any such condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

"Condemnation Award" means all compensation, sums, or anything of value awarded, paid, or received as the result of a Total Taking or Partial Taking.

"Confidential Information" has the meaning set forth in Section 19.7(a).

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Hotwire or the general partner of Hotwire, whether through ownership of voting securities, by contract, or otherwise.

"CPI Index" has the meaning set forth in Section 7.2(b).

"Customer Premises Equipment" has the meaning set forth in Section 3.1(j).

"Customer Records" has the meaning set forth in Section 19.6.

"Customer Service Center" has the meaning set forth in Section 3.1(a).

"**Data Center Service**" has the meaning set forth in Section 4.2(f).

"**Data Transport Service**" has the meaning set forth in Section 4.2(g).

"Decline Notice" has the meaning set forth in Section 15.3(c)

"**Drop**" means a fiber connection from an optical tap (whether from a pole or underground cable terminus) in the public right-of-way or other land reserved for utility construction or other public use to the premises of a customer or subscriber of any Communication Services and includes any "downlead," and located between the demarcation point of the Outside Plant and the customer's premises as shown on the drawing included in Appendix 1.

"Drop Installation Charge" has the meaning set forth in Section 4.3

"Easements" means all easements (whether express or prescriptive), real property licenses, rights-of-way, or similar agreements (such as railroad crossing agreements and leases of conduits) benefiting or otherwise affecting the System Assets, including any of the foregoing that afford the City the right to access and use the Outside Plant (or any portion thereof) or to locate or install Outside Plant fiber and other components and any easements in connection with Capital Improvements made by Hotwire.

"Elective Capital Improvement" has the meaning set forth in Section 8.6.

"Electricity" has the meaning set forth in Section 4.11(a)(ii).

- "Electronics" means any and all electronics and electronic components that process, compress, modify and route signals along the Outside Plant, including digital subscriber line access multiplexers, digital loop carriers, routers, wave division multiplexers, and switches.
- "Encumbrance" means any encumbrance, charge, security interest, pledge, mortgage, lien, hypothecation, right of others (including any right or obligation to acquire, option, right of first refusal, right of first offer, or right of pre-emption), claim, interest, easement, covenant, burden, title defect, title retention provision, surety, assignment, or other restriction or limitation of any kind whatsoever, in each case other than any Permitted Encumbrance.
- "Event of Default" has the meaning set forth in Section 13.1.
- "Engineering Standards" means standards and specifications for the construction, installation, repair, or replacement of Capital Improvements, and the use of materials and equipment, that are (i) in accordance with Required Licenses, Legal Requirements, Prudent Communication Service Industry Practice, System Insurance Requirements, System Contract Requirements, and Manufacturer's Recommendations; (ii) requiring no less quality, precision, and care than the engineering standards applied by Hotwire or its Affiliates in distribution systems similar to the Fibrant System; (iii) do not degrade the structural integrity of the Fibrant System or any material System Asset, and (iv) in the case of any Capital Improvement that would reasonably be expected to cost \$200,000 or more, the construction, installation, repair, or replacement thereof will be (A) effected pursuant to detailed plans and specifications approved by the City, and (B) conducted under the supervision of a qualified architect or engineer selected by Hotwire and approved by the City, such approval in each case not to be unreasonably withheld, conditioned, or delayed.
- **"Extension"** has the meaning set forth in Section 9.1(a).
- "Fair Market Value" of any asset or group of assets means, as of the relevant date of determination, the price that a willing buyer, not affiliated with the seller and under no compulsion to buy, would pay in an arms-length transaction for such assets to a willing seller, under no compulsion to sell.
- "Fibrant Employees" has the meaning set forth in Section 18.2(a).
- "Fibrant Vehicles" has the meaning set forth in Section 3.1(j)
- "Fibrant System" has the meaning set forth in Recital A.
- "Financial Statements" has the meanings set forth in Section 19.5(b).
- "First Refusal Period" has the meaning set forth in Section 15.3.
- "Force Majeure" has the meaning set forth in Section 19.11.
- "Free Sale Period" has the meaning set forth in Section 15.3(c).

- "Full Replacement Cost" means the actual replacement cost of the insured property, without deduction for physical depreciation.
- "GAAP" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination, applied on a basis consistent with prior periods.
- "Governmental Authority" means any national, federal, state, provincial, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, agency, ministry or other similar body exercising executive, legislative, judicial, regulatory, or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform any of such functions.
- "Grandfathered Fibrant Service Area" has the meaning set forth in Section 6.1(a).
- "Head End" has the meaning set forth in Section 3.1(d).
- "Head End Premises" has the meaning set forth in Section .
- "Hotwire" has the meaning set forth in the preamble to this Agreement.
- "Hotwire Lease Conditions Precedent" has the meaning set forth in Section 3.3(c).
- "Hotwire Material Indebtedness" means any indebtedness for money borrowed, the deferred purchase price of property or services, or obligations as an account party in respect of any letter of credit, guaranty, or bond of Hotwire or any Affiliate of Hotwire in an aggregate principal amount exceeding \$5,000,000.
- "HVAC Service" has the meaning set forth in Section 4.11(a)(iv)
- "HVAC Equipment" has the meaning set forth in Section 8.1(a).
- "Incumbent Provider Change of Control" has the meaning set forth in Section 17.1(e).
- "Independent Appraiser" has the meaning set forth in Section 21.1(c).
- "**Initial Term**" has the meaning set forth in Section 3.4(a)(iii).
- "**Intended Use**" has the meaning set forth in Section 6.1(a).

- "Lease Commencement Date" has the meaning set forth in Section 3.4(a).
- "Lease Conditions Precedent" has the meaning set forth in Section 3.3(a).
- "Lease Term" has the meaning set forth in Section 3.4(a)(ii).
- "Legal Requirements" means all Federal, state, and local laws, including common law, constitutions, statutes, ordinances, rules, regulations, policies, orders, codes, decrees and judgments, and Required License conditions or restrictions, as amended from time to time, now or hereafter in effect or promulgated.
- "Manufacturer's Recommendations" means, with respect to all Electronics, equipment, and fiber that are at any time a part of the System Assets, Required Capital Improvements, or Elective Capital Improvements, the instructions, procedures, and recommendations issued by the manufacturer relating to the operation, maintenance, or repair of such Electronics, equipment, or fiber, and any revisions or updates thereto from time to time issued by the manufacturer.
- "Material Adverse Event" means, with respect to a Party, a change, event, occurrence, state of facts, or development that (i) has a material adverse effect on the financial condition, business, or results of operations of the Party, or (ii) prevents the Party from consummating the System Lease.
- "NID" means any network interface device that connects the Outside Plant to Customer Premises Equipment. Each NID serves as the demarcation point between the Drop and the Customer Premises Equipment.
- "NOC" means the network operations center for the Fibrant System, housed and located in the NOC Premises at the Customer Service Center.
- "NOC Furnishings and Equipment" has the meaning set forth in Section 3.1(c)
- "**NOC Premises**" has the meaning set forth in Section 3.1(a).
- "Optional Termination Conditions" has the meaning set forth in Section 17.1
- "Other Service" has the meaning set forth in Section 4.2(i).
- "Outside Plant" has the meaning set forth in Section 3.1(g).
- "Outside Plant Maps" has the meaning set forth in Section 3.1(h).
- "Overdue Rate" means 1.5 percent per month simple interest.
- "Partial Taking" has the meaning set forth in Section 12.1(b).

"Permitted Encumbrance" means: (a) liens for ad valorem or property taxes not yet due and payable, for which the lienor has established and maintained adequate reserves in its financial records in accordance with GAAP; (b) Encumbrances imposed by Legal Requirements, such as materialmen's, mechanics', carriers', workmen's and repairmen's liens and other similar liens arising in the ordinary course of business and securing obligations not yet due and payable; (c) encumbrances imposed by Easements, Permits, and Pole Agreements to which the City is a party; (d) pledges or deposits arising in the ordinary course of business to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations; (e) minor survey exceptions, reciprocal easement agreements and other customary encumbrances on title to real property that (i) were not incurred in connection with any indebtedness, (ii) do not render title to the property encumbered thereby unmarketable or materially affect the value of or use of such property; and (f) Encumbrances that do not, individually or in the aggregate, materially adversely affect the value of or the use of property for its current and anticipated purposes.

"Party" and "Parties" have the meanings set forth in the preamble to this Agreement.

"Permits" means all permits, franchises, licenses, or similar agreements required for the provision, routing and operation of Communication Services to business and consumers on or from the System Assets, including permits, franchises, licenses, or similar agreements granted by Governmental Authorities (including permits from highway departments and state and county agencies, and franchise and right-of-way license agreements with local governments) that provide the City with the right to access and use public rights of way for the installation or locations of Outside Plant fiber and components.

"**Person**" means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, estate, joint venture, association or other organization, any division, segment or other unincorporated business, whether or not a legal entity, or a Governmental Authority.

"Pole Agreements" means all pole attachment agreements or similar arrangements with third parties (including BellSouth Telecommunications, Inc, D/B/A AT&T North Carolina, and Duke Energy Carolinas, LLC) that either own the poles to which the Outside Plant fiber and other components are affixed or that attach their lines to the poles that constitute part of the System Assets that provide the City with the right to access and use telephone or utility poles, conduits or similar facilities for the installation or location of Outside Plant fiber, lines, or components.

**"Pole Attachment Dispute"** has the meaning set forth in Section 7.3.

"Post-Term Transition Agreement" has the meaning set forth in Section 17.3(d).

"Prudent Communication Service Industry Practice" means the standard of operating and maintenance practice, at any particular time, methods and acts, that, in light of the relevant facts, is generally engaged in or approved by a significant portion of the owners of distribution systems that are similar to the Fibrant System, that would have been expected to accomplish the desired

result consistent with good business practice, reliability and safety, and in compliance with all Manufacturer's Recommendations.

- "Purchase Offer" has the meaning set forth in Section 15.3(a).
- "Quarterly Rent Target" has the meaning set forth in Section 17.1(b)(iv).
- "Reference Quarter" has the meaning set forth in Section 17.1(b)(i).
- "Reference Year" has the meaning set forth in Section 17.1(b)(ii).
- "**Referendum**" has the meaning set forth in Recital F.
- "Refusal Exercise Notice" has the meaning set forth in Section 15.3(b).
- "Refusal Offer Notice" has the meaning set forth in Section 15.3(a).
- "Refusal Consideration Period" has the meaning set forth in Section 15.3(b).
- "Renewal Conditions Precedent" has the meaning set forth in Section 3.4(b)
- "Renewal Reference Period" has the meaning set forth in Section 3.4(b)(i).
- "Renewal Term" has the meaning set forth in Section 3.4(a)(iv).
- "**Rent**" has the meaning set forth in Section 4.2(a).
- "Replacement Capital Improvement" means any Capital Improvement that constitutes maintenance, repair, overbuild, or replacement of any System Asset, and any upgrade of a System Asset to the extent required to comply with Prudent Communication Service Industry Practice or Competitive Standards, including the replacement of fiber.
- "Required License" means any license, permit, franchise, approval, finding of suitability, or other authorization issued by a federal, state or local governmental entity or regulatory agency with respect to the operation or provision of Communication Services to businesses, residences, or consumers, or otherwise required by any Legal Requirement applicable to the Fibrant System or any System Assets.
- "Retained Dark Fiber" has the meaning set forth in Section 3.2.
- "Revenue Percentage Reopener Right" has the meaning set forth in Section 4.6.
- "RFP" has the meaning set forth in Recital D.
- "Right of First Refusal" has the meaning set forth in Section 15.3.

- "Sale Assets" has the meaning set forth in Section 15.3.
- **"Satellite Dish Equipment"** has the meaning set forth in Section 3.1(e).
- **"Satellite Dish Premises"** has the meaning set forth in Section 3.1(f).
- "Service Costs" has the meaning set forth in Section 4.11(b).
- "Service Level Standards" has the meaning set forth in Section 2.5(a)(ii).
- "State Cable Television Franchise Act" has the meaning set forth in Section 19.1.
- "Structural Portions" has the meaning set forth in Section 8.1(a).
- "Sublease" means any lease, sublease, or under lease by a lessee to a sublessee or under lessee, or all or any part of the System Assets, including a license to use any such assets.
- "Subscriber Agreements" means all contracts and agreements, to which either the City or Hotwire is or at any time may be a Party, for the provision of any Communications Service to any residential, business, consumer, or other user of Communications Services provided through the System Assets.
- "Surety Bond" has the meaning set forth in ARTICLE XVI.
- "Sun Trust Institutional" has the meaning set forth in Recital C.
- "System Assets" has the meaning set forth in Section 3.1.
- "System Bond Finance Contract" means any contract or agreement or any kind pursuant to which the City borrows or otherwise is extended credit, all or any part of which is used to finance, refinance, or otherwise provide funds for the finance of the Fibrant System or any part thereof, whether evidenced by notes, bonds, credit agreement, indenture, installment finance contract, or otherwise, and whether or not secured by deed of trust, mortgage, security agreement, pledge, charge, or lien on any System Assets, and including without limitation the Bond Refinance Contract.
- "System Contract Requirements" means all Easements, Permits, Pole Agreements, Subscriber Agreements, and other contracts or agreements to which the City or Hotwire is or may be a Party necessary for, used in connection with, or otherwise or related in any way to the System Assets.
- "System Insurance Requirements" means the terms of any insurance policy required under this Agreement and all requirements of the insurer or issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of and compliance with any such policy.
- "System Lease" has the meaning set forth in Section 3.1.

- "System Maintenance Records" means Outside Plant Maps, maintenance and repair logs, maintenance manuals, and other records of and for the System Assets, as are customarily created and maintained for communication systems similar to the Fibrant System and in accordance with Prudent Communication Service Industry Practice.
- "Tangible Net Worth" has the meaning set forth in Section 10.2(a).
- "Thermobond Building" has the meaning set forth in Section 3.1(e).
- "Third-Party-Contract Savings" has the meaning set forth in Section 2.8.
- "**Total Taking**" has the meaning set forth in Section 12.1(a).
- "Transition Management Officer" has the meaning set forth in Section 2.4.
- "Transition Management Period" has the meaning set forth in Section 2.2.
- "Transition Management Services" has the meaning set forth in Section 2.5.
- "UCC" has the meaning set forth in Section 5.1
- "Video Service" has the meaning set forth in Section 4.2(c).
- "Voice Service" has the meaning set forth in Section 4.2(e).
- "Yearly Rent Target" has the meaning set forth in Section 17.1(b)(v).

#### **APPENDIX 3**

#### SERVICE LEVEL STANDARDS

Customer Service Level and Performance Standards

Hotwire's Video Services, Internet Services and Telephone Services will comply with the following Customer Service Level and Performance Standards (the "Standards"). Initially capitalized terms used in this Exhibit have the meanings ascribed to those terms in the Installation Agreement. The following standards apply only to standard Voice Services, Video Services, and Internet Services provided to residential and business subscribers, and do not apply to business or other subscribers who enter into separate service level agreements with Hotwire.

## 1. Service Availability.

Service Availability is calculated separately for the Video Services, Internet Services, Voice Services, and any Other Services.

For each of the Services, "Service Availability" is calculated by dividing the difference of total number of seconds in each calendar quarter less the total number of seconds an Outage is uncured for a Service in the City by the total number of seconds in each calendar quarter and multiplying by 100.

Hotwire's Data Service and Telephone Service will achieve at least 99.5% Service Availability each month.

Hotwire's Video Service will achieve at least 97% monthly, 98% quarterly and 99% Service Availability annually.

Calculation of Service Availability under this Section does not include time during which any of the Services is not available due to a Force Majeure event (as defined in the Installation Agreement), or regularly scheduled or scheduled ad hoc maintenance activities. All scheduled maintenance work will be performed during off-peak hours (i.e., between midnight and 6 a.m. Eastern Standard Time, when maintenance activities will affect the fewest number of individual users).

## 2. Timely Response to and Cure of Trouble Reports.

A "Trouble Report" is any Service-related report, whether written or oral, made by a customer relating to any of the Services, for which a trouble ticket is opened, provided that: (a) Hotwire will open a trouble ticket for each Service-related report received by Hotwire's Customer Service Center (as defined herein); and (b) any report of a Service-related issue that is caused by Customer error, a defect in Customer-owned equipment, or a Force Majeure event is not considered a Trouble Report. Trouble Reports must be placed in a manner consistent with Hotwire's Customer Service procedures, which consist of calling Hotwire's Customer Call Center at 800-355-5668 (or successor number) or via email at cs@hotwiremail.com.

A "Minor Service Problem" is the same Service-related problem affecting: (a) 10 or fewer individual customers.

A "Major Service Problem" is the same Service-related problem affecting more than 10 but fewer than 75% of the individual Customers.

An "Outage" is a Service-related problem affecting at least 75% of the Customers in the City.

Hotwire will respond to any Trouble Report relating to a Minor Service Problem by 7 p.m. Eastern Standard Time on the calendar day (excluding Sundays and Holidays) following the day on which the Trouble Report is received. Hotwire will cure the issue(s) identified in the Trouble Report no later than 7 p.m. Eastern Standard Time on the second calendar day (excluding Sundays and Holidays) after the day on which the Trouble Report is received, provided that if such issues cannot reasonably be cured within such period, Hotwire shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same.

Hotwire will respond to any Trouble Report relating to a Major Service Problem within 4 hours after initial receipt of the Trouble Report. Hotwire will cure the issue(s) identified in the Trouble Report within 24 hours after initial receipt of the Trouble Report, provided that if such issues cannot reasonably be cured within such period, Hotwire shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same.

Hotwire will respond to any Trouble Report relating to an Outage within 2 hours after initial receipt of the Trouble Report. Hotwire will cure the issue(s) identified in the Trouble Report within 12 hours after initial receipt of the Trouble Report, provided that if such issues cannot reasonably be cured within such period, Hotwire shall commence the cure of such issues within such period and thereafter diligently and expeditiously proceed to cure the same.

Any Trouble Report relating to a Minor Service Problem or a Major Service Problem that is received after 5:00 pm will be considered as being received at 8:00 AM on the following day. A Trouble Report relating to an Outage is considered as being received at the time it is actually received.

A Trouble Report is timely cured ("Timely Cured") if it is cured within the applicable timeframe as set forth above for Minor Service Problems, Major Service Problems and Outages.

"Trouble Reports Timely Cured" is calculated by dividing (a) the total number of Trouble Reports relating to Minor Service Problems and Major Service Problems within a calendar quarter that are cured by Hotwire within the deadlines set forth above by (b) the total number of Trouble Reports relating to Minor Service Problems and Major Service Problems received by Hotwire during the calendar quarter and (c) multiplying by 100.

Hotwire will achieve at least 90% Trouble Reports Timely Cured during each calendar quarter.

#### 3. Customer Service Orders.

A "Service Order" is an order received by Hotwire from a Customer for new Services or to make a change in existing Services.

Hotwire will contact a Customer to schedule a Service Order appointment within 24 hours after receipt of a Service Order, and will complete all work associated with a Service Order install or change within 48 hours after the date and time the Customer was contacted to schedule an appointment time (the "Service Order Commitment Date"), unless the Customer requests a date beyond the applicable deadline. The deadlines set forth above exclude Sundays and Holidays.

"Holiday" means New Year's Day, Christmas Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Martin Luther King Day, President's Day, Good Friday, Yom Kippur and Veteran's Day.

"Compliance with Customer Service Order Commitment Date" is calculated by dividing (a) the total number of Service Orders completed within the deadlines set forth above by (b) the total number of Customer Service Orders received during each calendar quarter and (c) multiplying by 100.

Hotwire will achieve at least 90% Compliance with Customer Service Order Commitment Date during each calendar quarter (excluding those Service Orders for which a Customer requests a date beyond the applicable deadline).

Without limiting the generality of the foregoing, however, Hotwire shall, at all times during the Term of the Installation Agreement, (i) meet and comply with the "customer service standards" contained in the regulations of the FCC set forth in 47 C.F.R. § 76.309 (as such term is used therein), as amended and/or restated from time to time, and the customer service standards and provisions and credit terms set forth in any applicable telecommunications ordinances and other applicable legal requirements.

## 4. Customer Hold Time.

Hotwire will maintain and provide Customers with instructions on how to contact a Customer Service Center, which will include a Call Center located within the geographical borders of the United States, and which will be available by means of a toll-free number (currently, 800-355-5668) 24 hours per day, 7 days per week, 365 days per year to receive customer service calls and provide customer support as requested. Hotwire will at all times maintain adequate competent staff at such Call Center to ensure compliance with the Customer Service and Performance Standards set forth herein.

"Customer Hold Time Compliance" is calculated by dividing (a) the number of customer calls to Hotwire's call center during any calendar quarter in which the customer is put on hold for more than 90 seconds by (b) the total number of customer calls during that calendar quarter and (c) multiplying by 100.

Hotwire will achieve at least 90% Customer Hold Time Compliance under normal operating conditions during each calendar quarter.

#### 5. Customer Service Records.

Hotwire will maintain a written or electronic record ("Customer Service Records") of customer calls, and such Customer Service Records will at all times be sufficiently detailed to demonstrate Hotwire's compliance or non-compliance with each material Customer Service Level and Performance Standard included herein. Specifically, Hotwire's Customer Service Records will at a minimum identify: (a) the date and time when any Trouble Report is received, (b) the nature of the complaint, (c) the action taken by Hotwire in response to the call, (d) the results of the action taken, (e) a summary of Trouble Reports that were cured (and the time required for such cure) and that were not cured, and (f) the period of time during which any Service was unavailable due to a Force Majeure event. With respect to Service Orders, the Customer Service Records will identify: (g) the date and time when the Service Order is received, (h) the nature of the Service Order, (k) the time and date on which the Service install or change is completed.

Hotwire will make available to the City on a quarterly and annual basis or upon request by the City on a historical basis, network statistics with regard to the bandwidth being delivered to the City, Major and Minor Service Problem reporting, Outage reporting, maintenance issues and Trouble Reports. These statistics will be provided in an agreed-upon raw data format such as CSV, tab delimited, or other database file structure.

## 6. Emergency 911 Telephone Service Standards.

Hotwire will ensure that Emergency 911 service (hereinafter, "E-911" or successor requirement) will meet or exceed all local, state and federal requirements, including all FCC regulations.

# 7. Video Programming Service Standards.

The technical quality of the video signal provided by Hotwire shall be at least equivalent to the transmission and reception of cable and/or satellite-transmitted programming, and in all events, will meet or exceed the technical standards for performance of a "cable television system" contained in the regulations of the FCC set forth in 47 C.F.R. § 76.605 (as such term is used therein), as amended and/or restated from time to time.

#### 8. Virus Protection.

Hotwire must be capable of maintaining the network during inside or outside virus attacks and will maintain a "plan of action" for management of virus and denial of service attacks and recovery there from.

Hotwire may disconnect Services to a Customer whose computer(s) are infected with viruses until the Customer demonstrates to Hotwire's reasonable satisfaction that the viruses have been eliminated. If a Customer is disconnected from Services due to virus-related issues on more than one occasion, Hotwire must approve reactivation of the Customer's Service, and Hotwire may

charge the Customer (for their respective infected computer(s)) a reasonable reactivation fee not to exceed \$75.00. No disconnection by Hotwire due to viruses shall be counted when computing the service time percentages.

# 9. Internet Bandwidth and Service Availability.

Hotwire will be responsible for issues of latency (as that term is generally used in the industry) and packet delivery to each single-unit port. Hotwire will use its best efforts to minimize latencies through the use of properly configured networks and routes to ensure that minimum hops are maintained. Latency within the core network will not exceed 110 milliseconds. Packet delivery will be achieved at a ratio of 95% or greater.

#### **APPENDIX 4**

# DESCRIPTION of NOC PREMISES, HEAD END PREMISES and SATELLITE DISH PREMISES

### Customer Service Center Premises.

The "NOC Premises" consist of the areas on the first floor of the Customer Service Center shown Fibrant Exclusive Space on the drawing on page A4-3 of this Appendix 4.

The "Head End Premises" consist of the area on the first floor of the Customer Service Center shown as Headend (Fibrant/City Data Center) on the drawings on page A4-4 of this Appendix 4.

The premises described above are leased by the City to Hotwire with an appurtenant, non-exclusive right and license to use "Common Areas" described as follows:

- (a) the corridors, restrooms, stairwells and other common facilities furnished from time to time by the City (including currently those areas of the Customer Service Center shown as Shared Space on the drawing on page A4-3 of this Appendix 4; and
- (b) the entrance drives, parking areas and other common improvements furnished from time to time by the City on the Customer Service Center land described below.

The Head End Premises are leased by the City to Hotwire subject the reservation of a right and license in favor of the City to use (for its City Data Center and other purposes not related to the Fibrant System or forming a part of the System Assets) those areas of the Head End Premises (a) that are not now used as the location for the Head-End and (b) that are no longer necessary as the location for the Head End after any future reconfiguration, as designated by agreement between the parties.

The Customer Service Center is located on a tract of land identified as Rowan County tax parcel No. 01707101 and is legally described as follows:

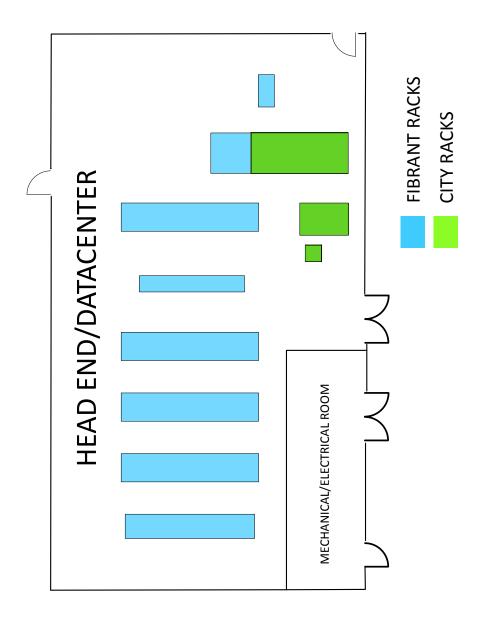
Being all of Lots Nos. 24-32 and 42-53 as shown upon the survey and map entitled Goodman's Melrose Heights dated February, 1947 and recorded in Book of Maps 9995, page 564, Rowan County Registry. Lot No. 53 has been reduced by that site easement granted to the City of Salisbury in that Deed recorded in Deed Book 825, page 621 shown as Tract 4 on that right of way and easement survey for the City of Salisbury recorded in Book of Maps 9995, page 3285.

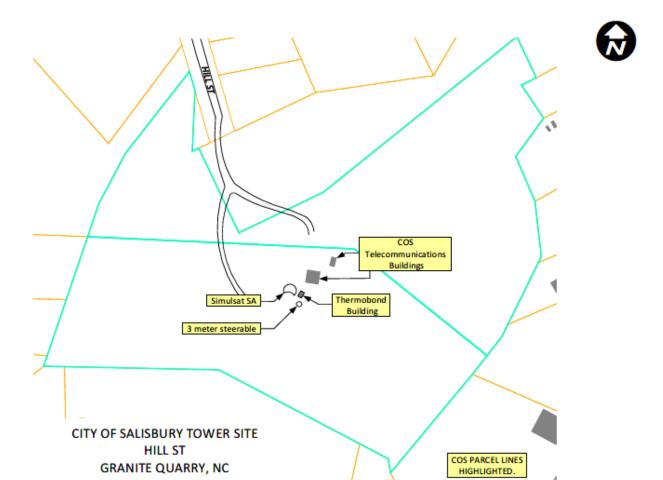
### Satellite Dish Premises.

The "Satellite Dish Premises" consist of (i) the "Thermobond Building" and (ii) the land on which that building and two satellite dishes are located, substantially as shown on the drawing on page A4-5 of this Appendix 4, together with all appurtenant easements in, to, and from the land necessary for (a) the location of related wiring and other facilities and (b) reasonable pedestrian and vehicular access. The premises are a portion of two contiguous tracts or parcels of land, identified as Rowan County tax parcels No. 3520560000001 and No. 3520560000002,

containing 12.811 acres, and being legally described in the deed to the City recorded in Deed Book 642, page 980, Rowan County Registry. The current address of the site is 310 Hill Street, Salisbury, North Carolina. The Satellite Dish Premises do not include any land or structures utilized by the City for communication tower structures.



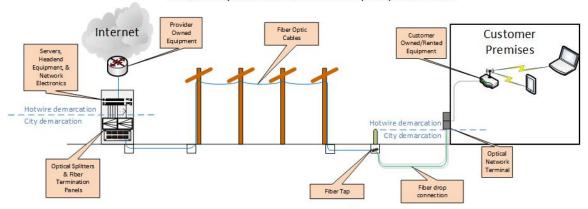




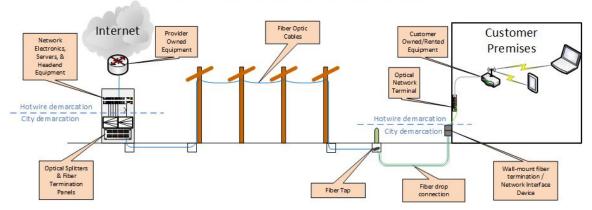
# Appendix 5

# **Demarcation Drawings**

# Outdoor Optical Network Terminal (ONT) Installation



## Indoor Optical Network Terminal (ONT) Installation



#### APPENDIX 6

#### FORM OF SURETY BOND

# CONTRACT BOND

(Miscellaneous - Not Construction)

Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

Bond No.	
Date	

KNOW ALL MEN BY THESE PRESENTS, That we, **Hotwire Communications, Ltd.,** a Pennsylvania limited partnership, as Principal (hereinafter called Principal), and **Travelers Casualty and Surety Company of America**, a corporation organized and existing under the laws of the State of Connecticut with its Home Office in the City of Hartford, Connecticut, as Surety (hereinafter called Surety), are held and firmly bound unto **The City of** Salisbury, a municipal corporation incorporated in the State of North Carolina, as Obligee, in the full and just sum of **Three Million** Dollars (\$3,000,000), lawful money of the United States of America, to be paid to the said Obligee, successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered, or is about to enter, into a **Transition Management Agreement and Lease**, dated [xxx], with Obligee for the lease from Obligee of Obligee's Fibrant optic-fiber-to-the premises network, as is more specifically set forth in said Agreement, a copy of which is attached hereto as Annex 1 and to which reference is hereby made.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well and truly perform, observe, and carry out the undertakings, covenants, terms, conditions and agreements of said Agreement during the Initial Term and the Renewal Term as set forth in said Agreement, and any extensions or renewals thereof granted or agreed to with or without notice to Surety, and any and all amendments and modifications of said Agreement that may hereafter be made by Principal and Obligee, notice of which amendments and modifications is hereby waived by Surety and including without limitation any and all of Principal's payment and performance obligations under said Agreement, including any obligation of Principal to pay liquidated damages under Section 12.2 of said Agreement, then this obligation to be void; otherwise to remain in full force and effect continuously.

Principal and Surety further agree, for the benefit of Obligee, as follows:

- 1. <u>Continuing Obligation</u>. This Bond shall be a continuing one and shall remain in full force and effect until all amounts payable under said Agreement have been paid in full. Without limiting the generality of the foregoing, Surety hereby irrevocably waives any right to terminate or revoke said Agreement.
- 2. <u>Waiver</u>. Surety hereby waives all notice with respect to the present existence or future incurrence of any obligation of Principal under said Agreement. Surety hereby consents to the taking of, or failure to take, from time to time, any action of any nature whatsoever with respect to Principal's obligation and with

respect to any rights against any person or persons or in any property including, without limitation, any renewals, extensions, modifications, postponements, compromises, indulgences, waivers, surrenders, exchanges and releases. Surety hereby specifically waives any and all rights under §26-7 through §26-9 of the North Carolina General Statutes, as amended.

3. <u>Governing Law and Jurisdiction</u>. This Bond shall be interpreted, and the rights and liabilities hereunder shall be determined, in accordance with the laws of the State of North Carolina, excluding its conflict of law rules. Principal and Surety hereby irrevocably consent to the exclusive jurisdiction of any North Carolina state court in, or the federal court for the Middle District of North Carolina for, Rowan County, North Carolina.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals as of the date indicated above, the name and seal of each party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

	Hotwire Communications, Ltd.		
Witness	, Principal		
	Travelers Casualty and Surety Company of America		
Witness	, Attorney-in-Fact		

# **APPENDIX 7**

# **QUARTERLY RENT TARGETS**

Minimum Payment	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Q1	\$-	\$236,100	\$241,290	\$246,640	\$252,150	\$257,820	\$263,660	\$269,680	\$275,880	\$282,260
Q2	-	236,100	241,290	246,640	252,150	257,820	263,660	269,680	275,880	282,260
Q3	221,190	236,100	241,290	246,640	252,150	257,820	263,660	269,680	275,880	282,260
Q4	221,190	236,100	241,290	246,640	252,150	257,820	263,660	269,680	275,880	282,260
Total	\$442,380	\$944,400	\$965,160	\$986,560	\$1,008,600	\$1,031,280	\$1,054,640	\$1,078,720	\$1,103,520	\$1,129,040
Minimum Payment	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
Minimum Payment Q1	2028 \$288,840	2029 \$295,620	2030 \$295,620	2031 \$295,620	2032 \$295,620	2033 \$295,620	2034 \$295,620	2035 \$320,000	2036 \$320,000	2037 \$320,000
•										
Q1	\$288,840	\$295,620	\$295,620	\$295,620	\$295,620	\$295,620	\$295,620	\$320,000	\$320,000	\$320,000
Q1 Q2	\$288,840 288,840	\$295,620 295,620	\$295,620 295,620	\$295,620 295,620	\$295,620 295,620	\$295,620 295,620	\$295,620 295,620	\$320,000 320,000	\$320,000 320,000	\$320,000 320,000

# Schedule 3.1(c)

# NOC Furnishings and Equipment

Item	Quantity	Comment	Location
Force DWDM transmitters	52		310 Hill Street Granite Quarry
Force DWDM receivers	52		1415 S Martin Luther King Jr Ave, Salisbury
Force DWDM switches	26		1415 S Martin Luther King Jr Ave, Salisbury
Quintech L-Band splitters	28		1415 S Martin Luther King Jr Ave, Salisbury
3.7M Steerable Dish	1		310 Hill Street Granite Quarry
Simulsat 5A	1		310 Hill Street Granite Quarry
Wade OFF AIR Antenna	8		310 Hill Street Granite Quarry
Norsat 3220 LNB	26		310 Hill Street Granite Quarry
DSR 4400MD Satellite Receiver	29		1415 S Martin Luther King Jr Ave, Salisbury
DSR 4410MD Satellite Receiver	15		1415 S Martin Luther King Jr Ave, Salisbury
DSR 4440 Satellite Receiver	2		1415 S Martin Luther King Jr Ave, Salisbury
DSR 4410 Satellite Receiver	22		1415 S Martin Luther King Jr Ave, Salisbury
DSR 4460 Satellite Receiver	2		1415 S Martin Luther King Jr Ave, Salisbury
DSR 4530 Satellite Receiver	2		1415 S Martin Luther King Jr Ave, Salisbury
DSR 6000 Satellite Receiver	15		1415 S Martin Luther King Jr Ave, Salisbury
DSR 6100 Satellite Receiver	7		1415 S Martin Luther King Jr Ave, Salisbury
DSR 6402 Satellite Receiver	1		1415 S Martin Luther King Jr Ave, Salisbury
DSR 6404 Satellite Receiver	1		1415 S Martin Luther King Jr Ave, Salisbury
SA 9850 Satellite Receiver	18		1415 S Martin Luther King Jr Ave, Salisbury
SA 9854 Satellite Receiver	8		1415 S Martin Luther King Jr Ave, Salisbury
SA 9858 Satellite Receiver	15		1415 S Martin Luther King Jr Ave, Salisbury
SA 9859 Satellite Receiver	7		1415 S Martin Luther King Jr Ave, Salisbury
SA 9858-1 Satellite Receiver	2		1415 S Martin Luther King Jr Ave, Salisbury
SA 9828 Satellite Receiver	16		1415 S Martin Luther King Jr Ave, Salisbury
SA 9800 Satellite Receiver	1		1415 S Martin Luther King Jr Ave, Salisbury
SA 9804 Satellite Receiver	2		1415 S Martin Luther King Jr Ave, Salisbury
Sencore 3187B OFF Air Antenna	10		1415 S Martin Luther King Jr Ave, Salisbury
Radiant VL4510 Encoder	1		1415 S Martin Luther King Jr Ave, Salisbury
Harmonnic Proview 7100	2		1415 S Martin Luther King Jr Ave, Salisbury
SVT Satellite Receiver	1		1415 S Martin Luther King Jr Ave, Salisbury
Comtech Satellite Receiver	1		1415 S Martin Luther King Jr Ave, Salisbury
Arris 7401 Satellite Receiver	3		1415 S Martin Luther King Jr Ave, Salisbury
Weather Channel Intellistar	1		1415 S Martin Luther King Jr Ave, Salisbury
Tandberg 8310 Satellite Receiver	3		1415 S Martin Luther King Jr Ave, Salisbury
Tandberg EN5930 Encoder	13		1415 S Martin Luther King Jr Ave, Salisbury
Trendnet switches	15		1415 S Martin Luther King Jr Ave, Salisbury
Dek-Tek	2		1415 S Martin Luther King Jr Ave, Salisbury
Quintech ASI Combiner	36		1415 S Martin Luther King Jr Ave, Salisbury
RGB ASI to IP server	8		1415 S Martin Luther King Jr Ave, Salisbury
Leitch ASI Combiner	6		1415 S Martin Luther King Jr Ave, Salisbury
Digital Adware Servers (Ad-Insertion)	2	1 server belongs to Prime Media	1415 S Martin Luther King Jr Ave, Salisbury
Cisco 4510	1		1415 S Martin Luther King Jr Ave, Salisbury
Cisco 6509	2		1415 S Martin Luther King Jr Ave, Salisbury

Item	Quantity	Comment	Location
Ineoquest boxes	4		1415 S Martin Luther King Jr Ave, Salisbury
ATX Ucrypt Servers	4		1415 S Martin Luther King Jr Ave, Salisbury
Trilithic Easy Plus	1		1415 S Martin Luther King Jr Ave, Salisbury
Key West Media Extreme	1		1415 S Martin Luther King Jr Ave, Salisbury
HP KVM	1		1415 S Martin Luther King Jr Ave, Salisbury
Toshiba DVD Player	1		1415 S Martin Luther King Jr Ave, Salisbury
Tandberg EN5990	2		1415 S Martin Luther King Jr Ave, Salisbury
Cisco ASA 5505	1		1415 S Martin Luther King Jr Ave, Salisbury
Comtech CMR-5975	3		1415 S Martin Euther King Jr Ave, Salisbury
Vubiquity 4011	1		1415 S Martin Luther King Jr Ave, Salisbury
International Datacasting SuperFlex Pro	2		1415 S Martin Euther King Jr Ave, Salisbury
HP Proliant DL360P	3		1415 S Martin Luther King Jr Ave, Salisbury
Juniper SRX 240	1		
Tandberg IPLEX	24		1415 S Martin Luther King Jr Ave, Salisbury
			1415 S Martin Luther King Jr Ave, Salisbury
Cisco 2960	6		1415 S Martin Luther King Jr Ave, Salisbury
Tandberg Encoder/Transcoder	7		1415 S Martin Luther King Jr Ave, Salisbury
Harmonnic Prostream 9000	12		1415 S Martin Luther King Jr Ave, Salisbury
Telect DC Power Box	14		1415 S Martin Luther King Jr Ave, Salisbury
WELLAV IP/QAM	1		1415 S Martin Luther King Jr Ave, Salisbury
KVM	1		1415 S Martin Luther King Jr Ave, Salisbury
HP Server Tandberg Monitoring	1		1415 S Martin Luther King Jr Ave, Salisbury
Zhone MXK 319 Chassis	1		1415 S Martin Luther King Jr Ave, Salisbury
Zhone MXK 819 Chassis	4		1415 S Martin Luther King Jr Ave, Salisbury
Zhone 10G Uplink Card	11		1415 S Martin Luther King Jr Ave, Salisbury
Zhone 8 port GPON Line Cards	28		1415 S Martin Luther King Jr Ave, Salisbury
Zhone 4 port GPON Line Cards	4		1415 S Martin Luther King Jr Ave, Salisbury
Zhone Active Ethernet Line Cards	6		1415 S Martin Luther King Jr Ave, Salisbury
Calix E7 Server	1		1415 S Martin Luther King Jr Ave, Salisbury
HP ProCurve	1		1415 S Martin Luther King Jr Ave, Salisbury
Cisco ASR 1K	2		1415 S Martin Luther King Jr Ave, Salisbury
Juniper SRX 3600	2		1415 S Martin Luther King Jr Ave, Salisbury
Cisco 4510	2		1415 S Martin Luther King Jr Ave, Salisbury
Cisco UCS 210	4		1415 S Martin Luther King Jr Ave, Salisbury
Dell R210	1		1415 S Martin Luther King Jr Ave, Salisbury
EMC VNX5300 SAN	1		1415 S Martin Luther King Jr Ave, Salisbury
Symmetricon GPS clocks	2		1415 S Martin Luther King Jr Ave, Salisbury
Dell R710	1		1415 S Martin Luther King Jr Ave, Salisbury
Cisco 4506	2		1415 S Martin Luther King Jr Ave, Salisbury
Power Edge 850 Server	1		1415 S Martin Luther King Jr Ave, Salisbury
Cisco ASR 9K	2		1415 S Martin Luther King Jr Ave, Salisbury
Aberdeen SuperMicro Blade Chassis (7	1		1415 S Martin Luther King Jr Ave, Salisbury
SuperMicro 2U server (16XDisk)	2		1415 S Martin Luther King Jr Ave, Salisbury
Dell Server (Ineoquest)	1		1415 S Martin Luther King Jr Ave, Salisbury
Dell PE R200 (ZMS)	1		1415 S Martin Euther King Jr Ave, Salisbury
Dell PE R200 (CMS)	1		1415 S Martin Luther King Jr Ave, Salisbury
AU Tech Room Alert 26W	1		1415 S Martin Luther King Jr Ave, Salisbury
Dell Precision R5400	2		1415 S Martin Luther King Jr Ave, Salisbury
SuperMicro 1U server (8XDisk)	4		<u> </u>
Dell 2U server	4		1415 S Martin Luther King Jr Ave, Salisbury
שבוו בט אנו ענו	4		1415 S Martin Luther King Jr Ave, Salisbury

# $Schedule\ 3.1(d)$

# **Head End**

Force DWDM transmitters	52	
Force DWDM receivers	52	
Force DWDM switches	26	
Quintech L-Band splitters	28	
3.7M Steerable Dish	1	
Simulsat 5A	1	
Wade OFF AIR Antenna	8	
Norsat 3220 LNB	26	
DSR 4400MD Satellite Receiver	29	
DSR 4410MD Satellite Receiver	15	
DSR 4440 Satellite Receiver	2	
DSR 4410 Satellite Receiver	22	
DSR 4460 Satellite Receiver	2	
DSR 4530 Satellite Receiver	2	
DSR 6000 Satellite Receiver	15	
DSR 6100 Satellite Receiver	7	
DSR 6402 Satellite Receiver	1	
DSR 6404 Satellite Receiver	1	
SA 9850 Satellite Receiver	18	
SA 9854 Satellite Receiver	8	
SA 9858 Satellite Receiver	15	
SA 9859 Satellite Receiver	7	
SA 9858-1 Satellite Receiver	2	
SA 9828 Satellite Receiver	16	
SA 9800 Satellite Receiver	1	
SA 9804 Satellite Receiver	2	
Sencore 3187B OFF Air Antenna	10	
Radiant VL4510 Encoder	1	
Harmonnic Proview 7100	2	
SVT Satellite Receiver	1	
Comtech Satellite Receiver	1	
Arris 7401 Satellite Receiver	3	
Weather Channel Intellistar	1	
Tandberg 8310 Satellite Receiver	3	
Tandberg EN5930 Encoder	13	
Trendnet switches	15	

Dek-Tek	2	
Quintech ASI Combiner	36	
RGB ASI to IP server	8	
Leitch ASI Combiner	6	
Digital Adware Servers (Ad-	2	1 server belongs to Prime Media
Insertion)		_
Cisco 4510	1	
Cisco 6509	2	
Ineoquest boxes	4	
ATX Ucrypt Servers	4	
Trilithic Easy Plus	1	
Key West Media Extreme	1	
HP KVM	1	
Toshiba DVD Player	1	
Tandberg EN5990	2	
Cisco ASA 5505	1	
Comtech CMR-5975	3	
Vubiquity 4011	1	
International Datacasting	2	
SuperFlex Pro		
HP Proliant DL360P	3	
Juniper SRX 240	1	
Tandberg IPLEX	24	
Cisco 2960	6	
Tandberg Encoder/Transcoder	7	
Harmonnic Prostream 9000	12	
Telect DC Power Box	14	
WELLAV IP/QAM	1	
KVM	1	
HP Server Tandberg Monitoring	1	
Zhone MXK 319 Chassis	1	
Zhone MXK 819 Chassis	4	
Zhone 10G Uplink Card	11	
Zhone 8 port GPON Line Cards	28	
Zhone 4 port GPON Line Cards	4	
Zhone Active Ethernet Line Cards	6	
Calix E7 Server	1	
HP ProCurve		
Cisco ASR 1K	2	
Juniper SRX 3600	2	
Cisco 4510	2	
Cisco UCS 210	4	
Dell R210	1	
DEII I/STO		

EMC VNX5300 SAN	1	
Symmetricon GPS clocks	2	
Dell R710	1	
Cisco 4506	2	
Power Edge 850 Server	1	
Cisco ASR 9K	2	
Aberdeen SuperMicro Blade	1	
Chassis (7 blades)		
SuperMicro 2U server (16XDisk)	2	
Dell Server (Ineoquest)	1	
Dell PE R200 (ZMS)	1	
Dell PE R200 (CMS)	1	
AU Tech Room Alert 26W	1	
Dell Precision R5400	2	
SuperMicro 1U server (8XDisk)	4	
Dell 2U server	4	

# Schedule 3.1(e)

# **Satellite Dish Equipment**

Simulsat 5a Dish; Steerable DH 3.7 Meter Dish;  $8 \times 12$  Thermobond Building with three 22" x 84" x 36" racks; Argus UPS System; two Bard air handlers

# Schedule 3.1(k)

# **Fibrant Vehicles 2018**

Fleet ID	Year	Model	Description	Type/Assignment
FH10301	1997	F150	Ford 4x4 Pickup	Technician
FH10307	2003	4x4	Ford Ranger Pickup	Technician
FH10407	2004	E150	ECONOLINE VAN	Technician
FH10519	2005	E150	ECONOLINE VAN	Technician
FH10914	2009	4X2	EXPLORER	Supervisor
FH11005	2010	F250	4X4 SUPERCAB	Spare/PromoTrl
FH11009	2010	E150	ECONOLINE VAN	Technician
FH11011	2010	F550	AERIAL LIFT	Technician
FH11012	2010	XLT	TRANSIT CONNECT	Technician
FH11101	2011	F550	AERIAL LIFT	Technician
FH31001	2010	TRL	ROSSE MFG CO RR135	Reel Trl
FH31002	2010	TRL	CARGO MATE PROMO	Promo trl
FH31003	2010	TRL	FENEX SPLICING	Fiber splicing trl
FH30402	2004	TRL	Trailco utility	Reel Trailer conv.
FH40503	2005	G25E3	DAEWOO	WHSE/ fork lift

# (Schedule 3.1(k) continued)

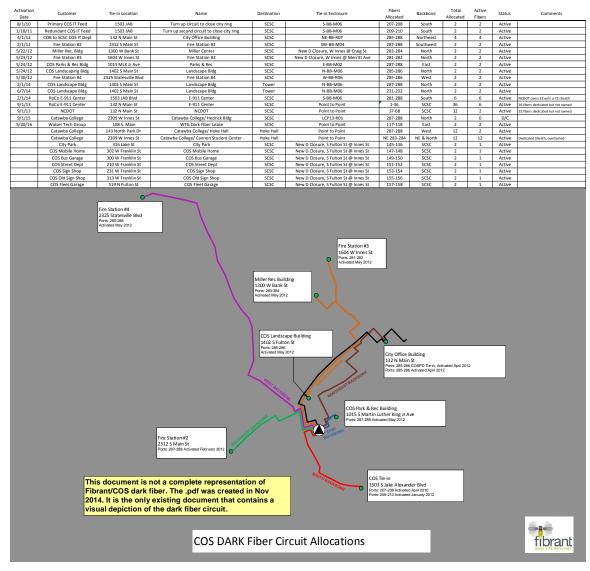
# **Test Equipment List**

_	Description	S.N.	Assignment
1	Vivax VX200-4 Locator Base	171050600859	Technican
	Vivax VX200-2 Locator Hand unit	070050701298	Technican
2	Vivax VX205-2 Locator Base	170060901547	Technican
	Vivax VX200-2 Locator Hand unit	070060701725	Technican
3	Fujikura Fiber Splicer FSM-60S	18674	Technican
	Cleaver, CT-30	83506	Technican
4	Fujikura Fiber Splicer FSM-60S	00078	Technican
	Cleaver, CT-30	119622	Technican
5	Fujikura Fiber Splicer FSM-18S	01859	Technican
	Cleaver, CT-30	83873	Technican
6	Green Lee Fiber Splicer 910FS	101158	Technican
	Green Lee Cleaver	N/A	Technican
7	AFL Work Station, ASW-02	ASW02-0300-01	Technican
8	Corning Fiber Tool Kit, M67-003	LST-000-016	Technican
9	Corning Fiber Tool Kit, M67-003	LST-000-016	Technican
10	EXFO OTDR, AXS100-023B-EI-04B-EI-VFL	502857	Technican
	with Inspection probe & launch kit		Technican
11	EXFO Power Meter, PPM-350C	530105	Technican
12	EXFO Power Meter, PPM-350C	530113	Technican
13	EXFO AXS-200/650 SharpTESTER	529734	Technican
14	JDSU Smart Class Triple Play Meter	ASBG0061500228	Technican
15	JDSU Smart Class Triple Play Meter	ASBG0061600243	Technican
16	Tempo Sidekick 7B toner	805107	Technican
17	JDSU Tri-Porter test meter	N/A	Technican
18	Green Lee Netcat	Netcat Pro 2 NC 500	Technican
19	Green Lee test meter	Netcat Pro 2 NC 500	Technican
20	Sunrise AT2500RQV Spectrum Analyzer	AT2500RQV	Service Center
21	Ineoquest Cricket IP Analyzer	4CA00020IP-0612-0019	Service Center
22	Dektek Video Stream Analyzer	4245.091.008	Service Center
23	Dektek Video Stream Analyzer	4245.090.550	Service Center

#### Schedule 3.2

## Retained Dark Fiber

ark Fiber Circuit Allocations



# Schedule 8.1(a) HVAC Sources

# **Customer Service Center**

# 1415 South Martin Luther King, Jr. Avenue

Unit#	Area Served	Туре	Fuel	Make	Model	Installation
BL-1	Entire Building	Boiler	G/E	Raypack	H7-0850	2010
Pump 1	Entire Building	Pump	E		JMM2515T	2010
Pump 2	Entire Building	Pump	E		JMM2515T	2010
Pump 3	Entire Building	Pump	E		JMM3313T	2010
Pump 5	Entire Building	Pump	E		VM3561	2010
OAU-1	Entire Building	Outside Air Rooftop A/C	G/E	AAON	RM-007-3	2010
OAU-2	Entire Building	Outside Air Rooftop A/C	G/E	AAON	RM-020-3	2010
OAU-3	Entire Building	Outside Air Rooftop A/C	G/E	AAON	RM-007-3	2010
HP-1	Offices	WSHP	E	Trane	EXHE0424	2010
HP-2	Offices	WSHP	E	Trane	EXHE0704	2010
HP-3	Offices	WSHP	E	Trane	EXVE02471	2010
HP-4	Offices	WSHP	E	Trane	EXWE06041	2010
HP-5	Offices	WSHP	E	Trane	EXWE12041	2010
HP-6	Offices	WSHP	Е	Trane	EXWE12041	2010
HP-7	Offices	WSHP	Е	Trane	EXVE02471	2010
HP-8	Offices	WSHP	Е	Trane	EXVE07041	2009
HP-9	Offices	WSHP	E	Trane	EXHE03071	1999
HP-12	Offices	WSHP	E	Trane	EXHE01811	1999
HP-13	Offices	WSHP	E	Trane	GEHE01211	1999
HP-14	Offices	WSHP	E	Trane	EXHE06041	2011
HP-15	Offices	WSHP	E	Trane	EXHE01811	2010
HP-16	Offices	WSHP	E	Trane	EXHE03071	2010
HP-17	Offices	WSHP	E	Trane	EXVE02471	2010
HP-18	Offices	WSHP	E	Trane	EXVE02471	2010
HP-19	Offices	WSHP	E	Trane	EXHE03071	2010
HP-20	Offices	WSHP	E	Trane	EXHE04841	2010
HP-21	Offices	WSHP	Е	Trane	EXHE06041	2010
HP-22	Offices	WSHP	E	Trane	EXHE01811	2010
HP-23	Offices	WSHP	E	Trane	EXHE04841	2010
HP-24	Offices	WSHP	E	Trane	EXHE04241	2010
HP-25	Offices	WSHP	E	Trane	EXHE03071	2010
HP-26	Offices	WSHP	E	Trane	EXHE03071	2010
HP-29	Offices	WSHP	E	Trane	GEHE00911	2010
HP-30	Offices	WSHP	E	Trane	EXVE02471	2010
HP-31	Offices	WSHP	E	Trane	EXHE04241	2010
HP-32	Offices	WSHP	E	Trane	EXVE02471	2010
HP-33	Offices	WSHP	E	Trane	EXHE03071	2010
HP-34	Offices	WSHP	E	Trane	EXHE03071	2010
HP-35	Offices	WSHP	E	Trane	EXVE04241	2010
HP-36	Offices	WSHP	E	Trane	GEHE00911	2010

#### Schedule 8.3

## **Drop Installation Guidelines**

- All infrastructure (i.e. drop) installation, repairs and construction methods and implementations must meet and remain in compliance with OSHA and NESC requirements.
- (1, 2, 6 & 12) count drops are utilized for different applications as needed and specified.
- Aerial drops installed adjacent to existing stranded sheath fiber must be attached via span clamps to ensure a singular attachment point per pole.
- Aerial drops installed on poles without stranded sheath fiber must be attached via a 7/16"
   X 4-3/4" drive hook. These hooks should be installed perpendicular to the path of the drop whenever possible.
- Aerial drops must be installed as such not to exceed the load rating specifications for the drop being installed.
- Underground drops must be buried to a minimum depth of 12" including hand bury. All drop sub-duct must be buried to minimum depth of 24".
- Drops must be physically tagged at each vault location. All drops must be clearly marked at all splice locations. All drop documentation must be clearly documented, illustrated and submitted to the Engineering Dept.
- When pulling excessive slack fiber cable from pole to pole or vault to vault through duct banks; slack cable should be carefully positioned into a figure 8 pattern to prevent damage.
- A minimum bend radius of 20x the cable diameter loaded and 10x the diameter unloaded is required at all times.
- Splice loss parameters: Maximum loss acceptable for any optical splice is .03 dB. (Includes drop splices)
- Nap vaults and drop vaults should be well maintained and kept free of debris to help ensure plant integrity.